AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

9-12-90
Vol. 55 No. 177

federal register

Wednesday
September 12, 1990

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

9-12-90
Vol. 55 No. 177
Pages 37455-37690

federal register

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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: September 21, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.

DALLAS, TX

WHEN: September 25, at 9:00 a.m.
WHERE: Federal Office Building, 1100 Commerce Street, Room 7A23–175, Dallas, TX.
RESERVATIONS: 1–800–366–2998.

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 55, No. 177
Wednesday, September 12, 1990

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1924

Servicing and Liquidation of Chattel Security

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Management Advice to Individual Borrowers and Applicants regulation. This action is being taken to change the title of Form FmHA 1960–12, "Financial Farm Analysis Summary," to Form FmHA 1960–12, "Financial and Production Farm Analysis Summary." The intended effect of this change is to provide a form for the County Supervisor to record actual crop and livestock production during the annual analysis of the farming operation.

EFFECTIVE DATE: September 12, 1990.

FOR FURTHER INFORMATION CONTACT: Johnny R. Toles, Jr., Farmer Programs Loan Servicing Officer, Farmer Programs, Farmers Home Administration, USDA, Room 5437, Washington, DC 20250, Telephone: (202) 475–4014.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only internal agency management, making publication for comment unnecessary.

This action will not create any significant record-keeping or reporting burdens or substantially increase costs to the Government and the public.

Programs Affected

These changes affect the following FmHA programs as listed in the catalog of Federal Domestic Assistance:

10.404—Emergency Loans.
10.406—Farm Operating Loans.
10.407—Farm Ownership Loans.
10.416—Soil and Water Loans.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded with the exception of nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loans Programs is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1924

Agriculture, Construction and repair, Loan programs—Agriculture.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for part 1924 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1980; 42 U.S.C. 2942; 5 U.S.C. 301; sec. 10 Pub. L. 93–357, 88 Stat. 392 7 CFR 2.23 and 2.70.

Subpart B—Management Advice to Individual Borrowers and Applicants

2. Section 1924.60 is amended by revising paragraph (c)(4) to read as follows:

§ 1924.60 Analysis.

* * * * *

(c) * * *

(4) Record the results on Form FmHA 1960–12, "Financial and Production Farm Analysis Summary."

* * * * *

Dated: May 10, 1990.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 90–21389 Filed 9–11–90; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–NM–93–AD; Amdt. 39–6731]

Airworthiness Directives; Airbus Industrie Model A310–200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A310–200 series airplanes, which requires repetitive X-ray inspections to detect cracks in certain stringers, and repair, if necessary. This amendment is prompted by full-scale fatigue testing by the manufacturer, which identified cracks in the area of the stringer run-outs inboard and outboard of Rib 14 at Stringers 6, 7, 8, and 9. This condition, if not corrected, could result in reduced structural capability of the wings.

EFFECTIVE DATE: October 23, 1990.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest

Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Airbus Industrie Model A310-200 series airplanes, which requires repetitive X-ray inspections to detect cracks in certain stringers, and repair, if necessary, was published in the **Federal Register** on June 7, 1990 (55 FR 23227).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Both commenters supported the rule.

Paragraph C. of the final rule has been revised to specify the current procedure for submitting requests for approval of an alternate means of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above. The FAA has determined that this change will neither increase the economic burden on any operator, nor increase the scope of the rule.

It is estimated that 7 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,680.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A310-200 series airplanes, up to and including serial number 264, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the wings, accomplish the following:

A. Prior to the accumulation of 12,000 landings, or within 1,500 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 12,000 landings, perform an X-ray inspection of Stringers 6, 7, 8, and 9 run-outs inboard and outboard of Rib 14, in accordance with Airbus Industrie Service Bulletin A310-57-2038, dated November 6, 1989.

B. If cracks are found, repair prior to further flight in accordance with a procedure approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. An alternative means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective October 23, 1990.

Issued in Renton, Washington, on September 5, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-21363 Filed 9-11-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-106-AD; Amdt. 39-6733]

Airworthiness Directives; Boeing Model 747-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747-400 series airplanes, which requires modification of the routing of the cabin-to-wing emergency escape strap. This amendment is prompted by a report that the escape strap is not long enough to reach the attach fitting on the wing. This condition, if not corrected, could result in the escape strap not being attached on the wing during ditching, which would impede evacuation onto the wing.

EFFECTIVE DATE: October 23, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jayson B. Claar, Airframe Branch, ANM-120S; telephone (206) 227-2784. Mailing address: FAA, Northwest Mountain 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 747-400 series airplanes, which requires modification of the routing of the cabin-to-wing escape

strap, was published in the Federal Register on June 21, 1990 (55 FR 25315).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

The Air Transport Association (ATA) of America, the sole commenter, expressed no objection to the proposed rule.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternate means of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 20 Model 747–400 series airplanes of the affected design in the worldwide fleet. It is estimated that 7 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $560.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747–400 series airplanes, listed in Boeing Alert Service Bulletin 747–25A2847, dated March 29, 1990, certificated in any category. Compliance required within the next 30 days after the effective date of this AD, unless previously accomplished.

To ensure that the escape strap is long enough so that it can be attached to the fitting on the wing, accomplish the following:

A. Reroute the escape strap behind the stowage bin structure in accordance with Boeing Alert Service Bulletin 747–25A2847, dated March 29, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

This amendment becomes effective October 23, 1990.

Issued in Seattle, Washington, on September 5, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–21364 Filed 9–11–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90–NM–101–AD; Amdt. 39–6727]

Airworthiness Directives; Aerospatiale Model ATR42–300 and ATR42–320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes, which currently requires a one-time inspection of the main landing gear (MLG) actuator fitting bolt holes for correct alignment, and rework of the fitting surface and bolt replacement, if necessary. This condition, if not corrected, could result in the inability to retract the landing gear and failure to achieve an adequate climb gradient. This amendment revises the applicability to add certain airplanes and to delete other airplanes that have been modified.

EFFECTIVE DATE: October 23, 1990.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Huhn, Standardization Branch, ANM–113; telephone (206) 227–2141. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 89–24–08, Amendment 39–6396 (54 FR 48079, November 21, 1989), applicable to certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes, to require a one-time inspection of the main landing gear (MLG) actuator fitting bolt holes for correct alignment, and rework of the fitting surface and bolt replacement, if necessary, was published in the Federal Register on June 15, 1990 (55 FR 24250).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air

safety and the public interest require the adoption of the rule as proposed.

It is estimated that 54 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $43,200.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I cerfity that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6396 (54 FR 48079, November 21, 1989), AD 89-24-08, with the following new airworthiness directive:

Aerospatiale: Applies to Model ATR42-300 and ATR42-320 series airplanes, Serial Numbers 003 through 164, which have not been modified in accordance with Aerospatiale Service Bulletin ATR42-32-0023, Revision 1, dated April 20, 1989; or ATR42-53-0045, Revision 1, dated April 21, 1989; or ATR42-53-0050 (Modification 2221), dated January 25, 1990; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent failure of the main landing gear (MLG) actuator fitting bolts due to an incorrect perpendicularity between the bolt hole axis and the fitting surface, accomplish the following:

A. For airplanes Serial Numbers 003 through 155: Within 90 days after December 21, 1989 (the effective date of AD 89-24-08; Amendment 30-6396), inspect the MLG actuator fitting bolt holes for correct perpendicularity, elongation, and alignment between the bolt hole axis and the fitting surface, in accordance with Aerospatiale Service Bulletin ATR42-53-0045, Revision 1, dated April 21, 1989, or Revision 2, dated January 21, 1990.

1. If no discrepancies are found, reassemble in accordance with the service bulletin.

2. If discrepancies are found, prior to further flight, rework the fitting surface and replace the bolts in accordance with the service bulletin.

B. For airplanes Serial Numbers 156 through 164: Within 90 days after the effective date of this amendment, inspect the MLG actuator fitting bolt holes for correct perpendicularity, elongation, and alignment between the bolt hole axis and the fitting surface, in accordance with Aerospatiale Service Bulletin ATR42-53-0045, Revision 1, dated April 21, 1989, or Revision 2, dated January 21, 1990.

1. If no discrepancies are found, reassemble in accordance with the service bulletin.

2. If discrepancies are found, prior to further flight, rework the fitting surface and replace the bolts in accordance with the service bulletin.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue NW., Renton, Washington.

This amendment supersedes Amendment 39-39-6396, AD 89-24-08.

This amendment becomes effective October 23, 1990.

Issued in Renton, Washington, on September 5, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-21365 Filed 9-11-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-ASO-11]

Amendment to Control Zone and Transition Area, Palm Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds an arrival area extension to the control zone and transition area. The extensions will provide additional controlled airspace for protection of instrument flight rules (IFR) aircraft executing the very high frequency omni directional range (VOR) standard instrument approach procedures (SIAP) to Runway 27R at Palm Beach International Airport. Additionally, minor corrections are made to the geographic position coordinates of Palm Beach International Airport and the Palm Beach County Park Airport. Also, the existing exclusion of the transition area beyond the 3-mile continental limit is deleted.

EFFECTIVE DATE: 0901 u.t.c., October 18, 1990.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On July 17, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Palm Beach, FL, control zone and transition area (55 FR 29067). The proposed action would add an arrival area extension to the control zone and transition area to provide additional controlled airspace for protection of IFR aircraft executing the VOR RWY 27R

instrument approach procedure to Palm Beach International Airport. Also, minor corrections would be made to the geographic position coordinates of Palm Beach International Airport and the Palm Beach County Park Airport. Also, it proposed to eliminate the exclusion of the transition area beyond the 3-mile continental limit since the territorial sea of the United States for international purposes has been extended by Executive Order from 3 to 12 nautical miles from the U.S. coast. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Sections 71.171 and 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6F, dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends to Palm Beach, FL, control zone and transition area. An arrival area extension is added to the control zone and the transition area to provide additional controlled airspace for protection of IFR aircraft executing the VOR RWY 27R instrument approach procedure to Palm Beach International Airport. Additionally, minor corrections are made in the geographic position coordinates of the Palm Beach International Airport and the Palm Beach County Park Airport. Also, this action deletes the existing exclusion of the transition area beyond the 3-mile continental limit since the territorial sea of the United States, for international purposes, has been extended by Executive Order from 3 to 12 nautical miles from the U.S. coast.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (i) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(8), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Palm Beach, FL [Revised]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Palm Beach International Airport (Latitude 26°40'58"N., Longitude 80°05'45"W.); within three miles each side of the Palm Beach VORTAC 083° radical extending from the 8.5-mile radius area to 9.5 miles east of the VORTAC; within a 6.5-mile radius of Palm Beach County Park Airport (Latitude 26°35'36"N., Longitude 80°05'09"W.)

§ 71.171 [Amended]

3. Section 71.171 is amended as follows:

Palm Beach, FL [Amended]

Following the clause "extending from the 5-mile radius area to 8.5 miles west and northwest of the VORTAC;" insert the following: "within 3 miles each side of the Palm Beach VORTAC 083° radial, extending from the 5-mile radius zone to 9.5 miles east of the VORTAC;"

Issued in East Point, Georgia, on August 28, 1990.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 90-21367 Filed 9-11-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-ASO-8]

Revision of Transition Area, Jesup, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Jesup, GA, transition area. An arrival area extension is added to provide additional controlled airspace protection for instrument flight rules (IFR) airspace executing the standard instrument approach procedure (SIAP) to Runway 28 based on the Slover non-directional radio beacon (NDB). Also, minor corrections are made to the latitude/longitude coordinate position of the Jesup-Wayne County Airport and Slover NDB.

EFFECTIVE DATE: 0901 u.t.c., October 18, 1990.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On July 13, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Jesup, GA, transition area (55 FR 28774). The proposed action would add an arrival area extension for additional airspace protection of IFR aircraft executing the NDB RWY 28 standard instrument approach procedure. Also, it would make a minor correction to the latitude/longitude coordinate position of the Jesup-Wayne County Airport and the Slover NDB. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6F, dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Jesup, GA, transition area. An arrival area extension is added to provide additional controlled airspace protection for IFR aircraft executing the NDB RWY 28 standard instrument approach procedure. Also, minor corrections are made to the latitude/longitude coordinate position of the Jesup-Wayne County Airport and the Slover NDB.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it

is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Jesup, GA [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Jesup-Wayne County Airport (Latitude 31°33'15"N., Longitude 81°53'12"W.); within 3 miles each side of the 092° and 286° bearings from the Slover NDB (Latitude 31°33'08"N., Longitude 81°53'15"W.), extending from the 6.5-mile radius area to 8.5 miles east and west of the NDB.

Issued in East Point, Georgia, on August 28, 1990.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 90-21366 Filed 9-11-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

RIN 0960-AC69

Federal Old-Age, Survivors, and Disability Insurance Benefits; Changes in the Annual Earnings Test

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final rules amend our regulations on the annual earnings test to reflect section 347 of Public Law 98-21, the Social Security Amendments of 1983, enacted April 20, 1983, and section 8002 of Public Law 100-647, the Technical and Miscellaneous Revenue Act of 1988, enacted November 10, 1988. Section 347 reduces the rate for computing excess earnings for beneficiaries age 65-69 in a taxable year that begins after 1989, from 50 percent to 33⅓ percent of their earnings above the applicable exempt amount. Section 8002 eliminates the need for a short taxable year computation under the annual earnings test in the year of a beneficiary's death by providing that the number of months for computing excess earnings in the taxable year of death is 12 for beneficiaries who die after November 10, 1988. Section 8002 further provides, for deaths after November 10, 1988, that the annual exempt amount that applies for beneficiaries aged 65-69 also applies to an individual who would have attained retirement age in a year but who dies prior to attaining that age. The effect of these statutory amendments is to liberalize the payment of Social Security benefits in certain cases where a beneficiary has excess earnings during a taxable year.

EFFECTIVE DATES: These rules are effective on September 12, 1990.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, telephone (301) 965-1769.

SUPPLEMENTARY INFORMATION:

Background

Social Security benefits are intended to replace, in part, earnings lost to an individual because of retirement, disability, or death. Therefore, the amount of Social Security benefits which an entitled worker under age 70 and individuals entitled to benefits on the worker's earnings record may receive each year depends on whether they receive wages and/or self-employment income in excess of a certain amount. The annual earnings test is used to measure the extent of a beneficiary's retirement earnings and to determine the amount, if any, to be deducted from his or her monthly benefits. It is also used to measure the work activity of auxiliary and survivor beneficiaries and the amount of benefits payable to them. It does not apply to a beneficiary age 70 or over. Also, the work activity of a beneficiary entitled to benefits because of his or her disability and a beneficiary outside the United States whose work is not covered by Social Security are subject to other tests.

An entitled worker and individuals entitled to benefits on the worker's earnings record can receive unreduced benefits if their earnings do not exceed an exempt amount. The annual exempt amount is determined by multiplying the monthly exempt amount for a given year by 12. The monthly exempt amount is determined by a formula in the Social Security Act (the Act) and is published annually in the **Federal Register**. If a beneficiary has earnings above the annual exempt amount, these earnings are charged against and cause deductions from benefits. For taxable years that began before January 1990, 50 percent of the amount of earnings over the annual exempt amount is considered "excess earnings." For taxable years beginning after December 1989, "excess earnings" will change to 33⅓ percent of earnings above the exempt amount for beneficiaries who have attainted retirement age, or who would have attained retirement age in such taxable year if they had not died; "excess earnings" will continue to be 50 percent of earnings above the exempt amount for beneficiaries under retirement age. Excess earnings are charged against benefits on a dollar-for-dollar basis.

Statutory Provisions

Section 347 of Public Law 98-21 made the following change in section 203(f)(3) of the Act:

- Changed the rate for computing excess earnings of beneficiaries who are of retirement age (currently, age 65) through age 69 in a taxable year that begins after December 1989, from 50 percent to 33⅓ percent of earnings above the exempt amount.

Section 8002 of Public Law 100-647 amended section 203(f)(3) of the Act as follows:

- Specified that, for purposes of computing the annual exempt amount, the number of months in the taxable year in which the beneficiary dies is 12;
- Made the rate for computing excess earnings that is applicable to beneficiaries who attained retirement age in a taxable year also applicable to beneficiaries who, but for death, would have attained retirement age in that taxable year; and
- Made these changes effective for deaths occurring after November 10, 1988.

Effects of Statutory Provisions

Prior to the effective date of section 347 of Public Law 98-21 (i.e., for taxable years that began before January 1990) $1 in benefits was deducted for each $2 of earnings above the exempt amount when applying the earnings test to a beneficiary under age 70. Beginning with taxable years that start after December 1989, the deduction rate for beneficiaries age 65 through 69 will be $1 in benefits for each $3 of earnings above the exempt amount.

Prior to the enactment of section 8002 of Public Law 100–647, we determined the exempt amount for the taxable year in which a beneficiary died by multiplying the applicable monthly exempt amount by the number of months the beneficiary was alive, including the month of death. This was called the short taxable year. Also, when a beneficiary died before attaining age 65, the monthly exempt amount for beneficiaries under age 65 applied. Section 8002 eliminated the use of the short taxable year, and the resulting proration of the annual exempt amount, when applying the annual earnings test in the year of death for beneficiaries who die after November 10, 1988. Also, for deaths occuring after November 10, 1988, if a beneficiary dies in the taxable year in which he or she would have attained age 65, the exempt amount that apples to beneficiaries age 65 and older will apply to that person, even if he or she died before actually attaining age 65.

New Regulatory Provisions

We are amending § 404.430 to provide for computing the excess earnings of a beneficiary who attained or, but for death (where death occurred after November 10, 1988), would have attained retirement age, as defined in section 216(l) of the Act, before the close of a taxable year beginning after December 1989 at the rate of 33⅓ percent of earnings above the applicable exempt amount. Also, we are amending § 404.428 to provide that, for purposes of applying the earnings test, the number of months in the taxable yar in which the beneficiary dies is 12, effective for deaths occurring after November 10, 1988.

The final regulations are effective on the date of publication in the **Federal Register.** However, the statutory provisions of Public Law 98–21 reflected in these regulations are effective for taxable years beginning after December 1989, for individuals who have attained retirement age, as defined in section 216(l) of the Act. The statutory provisions of Public Law 100–647 reflected in these regulations are applicable to deaths that occur after November 10, 1988.

Regulatory Procedures

The Department generally follows the Notice of Proposed Rulemaking and public comment procedures specified in the Administrative Procedure Act, 5 U.S.C. 553, in the development of its regulations. That Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of proposed rulemaking and public comment procedures in these regulations because we are only reflecting statutory changes which are not discretionary and do not involve the setting of policy. Therefore, opportunity for prior public comment is unnecessary and these amendments are being issued as final rules.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because the issuance of these regulations is not expected to result in significant administrative or program costs. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These proposed regulations impose no reporting/recordkeeping requirements requiring the Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these regulations will affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act of 1980, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security — Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.804 Social Security—Survivor's Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Death benefits; Disability benefits; Old-age, survivors, and disability.

Dated: May 23, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: July 9, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, part 404 of chapter III of title 20, Code of Federal Regulations, is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE

1. The authority citation for part 404, subpart E continues to read as follows:

Authority: Secs. 202, 203, 204 (a) and (e), 205(a), 222(b), 223(e), 224, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404 (a) and (e), 405(a), 422(b), 423(e), 424, 427, and 1302.

2. Section 404.428(a)(2) is amended by revising the last two sentences of paragraph (a)(2) to read as follows:

§ 404.428 Earnings in a taxable year.

* * * * *

(2) * * * For beneficiaries who die on or before November 10, 1988, a taxable year ends with the month of the death of the beneficiary. The month of death is counted as a month of the deceased beneficiary's taxable year in determining whether the beneficiary had excess earnings for the year under § 404.430. For beneficiaries who die after November 10, 1988, the number of months used in determining whether the beneficiary had excess earnings for the year under § 404.430 is 12.

* * * * *

3. Section 404.430 is amended by revising paragraphs (a) introductory text, (a)(1), (a)(2), (d) introductory text, (d)(1), (d)(1)(iv), and (d)(1)(v), and adding paragraphs (d)(1) (vi) through (xiii) to read as follows:

§ 404.430 Excess earnings defined for taxable years ending after December 1972; monthly exempt amount defined.

(a) *Method of determining excess earnings for years ending after December 1972.* For taxable years ending after 1972, an individual's excess earnings for a taxable year are 50 percent of his or her earnings (as described in § 404.429) for the year which are above the exempt amount. For an individual who has attained retirement age, as defined in section 216(l) of the Act, excess earnings for a taxable year beginning after December 31, 1989, are 33⅓ percent of his or her earnings (as described in § 404.429) for the year which are above the exempt amount. For deaths after November 10, 1988, an individual who dies in the taxable year in which he or she would have attained retirement age shall have his or her excess earnings computed as if he or she had attained retirement age. The exempt amount is obtained by multiplying the number of months in the taxable year (except that the number of months in the taxable year in which the individual dies shall be 12, if death occurs after November 10, 1988) by the following applicable monthly exempt amount.

(1) $175 for taxable years ending after December 1972 and before January 1974;

(2) $200 for taxable years beginning after December 1973 and before January 1975; and

* * * * *

(d) *Method of determining monthly exempt amount for taxable years ending after December 1977 for beneficiaries, age 65 or over.* (1) For purposes of paragraph (a)(3) of this section, for all months of taxable years ending after 1977, the applicable monthly exempt amount for an individual who has attained (or, but for the individual's death occurring after November 10, 1988, would have attained) retirement age as defined in section 216(l) of the Act before the close of the taxable year involved is—

* * * * *

(iv) $458.33⅓ for each month of any taxable year ending in 1981;

(v) $500 for each month of any taxable year ending in 1982;

(vi) $550 for each month of any taxable year ending in 1983;

(vii) $580 for each month of any taxable year ending in 1984;

(viii) $610 for each month of any taxable year ending in 1985;

(ix) $650 for each month of any taxable year ending in 1986;

(x) $680 for each month of any taxable year ending in 1987;

(xi) $700 for each month of any taxable year ending in 1988;

(xii) $740 for each month of any taxable year ending in 1989; and

(xiii) $780 for each month of any taxable year ending in 1990.

* * * * *

[FR Doc. 90-21265 Filed 9-11-90; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N-90-3136; FR-2864-N-01]

Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of revisions to FHA maximum mortgage limits for high-cost areas.

SUMMARY: This Notice amends the list of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act by increasing the mortgage limits in Ulster County, NY; New Castle County, DE; Kent County, MD; Isle of Wight, Warren, Rockingham and Spotsylvania Counties, VA and Fredericksburg City, VA; the Louisville KY–IN MSA; the Miami-Hialeah, FL PMSA, Collier County, FL; Ft. Pierce, FL MSA; the Ft. Lauderdale-Hollywood-Pompano Beach, FL PMSA; Los Alamos County, NM; Summit County, UT; Douglas and Elko Counties, NV; Pinal County, AZ; Gunnison County, CO; the Sacramento, CA MSA; Mendocino, Inyo and San Luis Obispo Counties, CA; Blaine County, ID; and the Bremerton, WA MSA; and adding "high-cost" mortgage limits for Grafton County, NH; Washington County, NY; Sussex County, DE; Caroline County, MD; Morgan County, AL; St. Lucie County, FL; the Bryan-College Station, TX MSA; Johnson County, IA; Burnet County, TX; Valencia County, NM; the Bellingham, WA MSA; and Clallam, Island, San Juan, Skagit and Jefferson Counties, WA. Mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

EFFECTIVE DATE: September 12, 1990.

FOR FURTHER INFORMATION CONTACT: For single family: Morris Carter, Director, Single Family Development Division, Room 9272; telephone (202) 708–2700. For manufactured homes: Robert J. Coyle, Director, Title I Insurance Division, Room 9160; telephone (202) 708–2880; 451 Seventh Street, SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA), 12 U.S.C. (1710–1749), authorizes HUD to insure mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and combination manufactured homes and lots. The NHA, as amended by the Housing and Community Development Amendments of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, sections 2(b) and 214 of the NHA provide for special high-cost limits for insured mortgages in Alaska, Guam and Hawaii.

The last comprehensive list of high-cost areas was published on January 12, 1990 (55 FR 1312) listing all areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act, and the applicable limits for each area. Amendments to the annual listing were published on June 14, 1990 (55 FR 24075).

Currently, the National Housing Act provides that HUD can grant mortgage insurance for a one-family dwelling in a high-cost area up to a maximum of $101,250 (150% of the medium one-family dwelling mortgage limit). The basic law remains unchanged. For fiscal year 1990, the Departments of Veterans Affairs and Housing and Urban Development Appropriations Act (Pub. L. 101–144) has permitted HUD to insure high-cost area mortgages up to 185% of the base statutory mortgage insurance limits provided for in the NHA ($124,875 in the case of a one-family dwelling). Hence, published limits in this Notice in excess of 150% of the statutory limits will not be effective after September 30, 1990 unless the Congress extends the fiscal year 1990 increase, except for mortgages insured under Title II of the NHA:

(1) Pursuant to a conditional commitment or master conditional commitment issued by HUD on or before September 30, 1990; or

(2) Pursuant to an appraisal report or master appraisal report signed by a Direct Endorsement underwriter on or before September 30, 1990; or

(3) Pursuant to a certificate of reasonable value or master certificate of reasonable value issued by the Department of Veterans Affairs on or before September 30, 1990.

For Title I loans, the published limits in this Notice will not apply to any loans and advances of credit, or purchases of obligations and advances of credit, made after September 30, 1990.

Since the statutory change is temporary in nature, HUD will not amend its regulations to conform them to the increase to 185% of the basic mortgage limit in high-cost areas for fiscal year 1990. The current regulations, which limit insurance coverage to 150% of the base amount in high-cost areas, will be waived in those areas listed in this Notice, where local cost data supports a limit in excess of 150%.

This Document

Today's document increases high-cost mortgage amounts for Ulster County, NY; New Castle County, DE; Kent County, MD; Isle of Wight, Warren, Rockingham and Spotsylvania Counties, VA and Fredericksburg City, VA; the Louisville KY–IN MSA; the Miami-Hialeah, FL PMSA, Collier County, FL; Ft. Pierce, FL MSA; the Ft. Lauderdale-

Hollywood-Pompano Beach, FL MSA; Los Alamos County, NM; Summit County, UT; Douglas and Elko Counties, NV; Pinal County, AZ; Gunnison County, CO; the Sacramento, CA MSA; Mendocino, Inyo and San Luis Obispo Counties, CA; Blaine County, ID; and the Bremerton, WA MSA; and adding "high-cost" mortgage limits for Grafton County, NH; Washington County, NY; Sussex County, DE; Caroline County, MD; Morgan County, AL; St. Lucie County, FL; the Bryan-College Station, TX MSA; Johnson County, IA; Burnet County, TX; Valencia County, NM; the Bellingham, WA MSA; and Clallam, Island, San Juan, Skagit and Jefferson Counties, WA. Mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

These amendments appear in two parts. Part I explains high-cost limits for mortgages insured under Title I of the National Housing Act. Part II lists each high-cost area, with applicable limits for single family residences (including condominiums) insured under section 203(b), 234(c) and 214 of the National Housing Act.

List of Subjects

24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Loan programs-housing and community development, Manufactured homes, Reporting and recordkeeping requirements.

24 CFR Part 203

Hawaiian natives, Indians: lands, Home improvement, Loan programs-housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department publishes the revised dollar limitations as follows:

National Housing Act High Cost Mortgage Limits

I. Title I: Method of Computing Limits

A. *Section 2(b)(1)(D). Combination manufactured home and lot (excluding Alaska, Guam and Hawaii)*: To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of part II of this list by .80. For example, Grafton County, NH, has a one-family limit of $114,000. The combination home and lot loan limit is $114,000 × .80, or $91,200.

B. *Section 2(b)(1)(E): Lot only (excluding Alaska, Guam and Hawaii)*: To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of part II of this list by .20. For example, Grafton County, NH, has a one-family limit of $114,000. The lot-only limit for Grafton County, NH is $114,000 × .20, or $22,800.

C. *Section 2(b)(2). Alaska, Guam and Hawaii limits*: The maximum dollar limits for Alaska , Guam and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1).

Accordingly, the dollar limits for Alaska, Guam and Hawaii are as follows:

1. For manufactured homes: $56,700. ($40,500 × 140%).

2. For combination manufactured homes and lots: $75,600. ($54,000 × 140%).

3. For lots only: $18,900. ($13,500 × 140%).

II. Title II:

Updating of FHA Sections 203(b), 234(c) and 214 Area Wide Mortgage Limits

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Region I—HUD Field Office—Manchester Office				
Grafton County, NH	$114,000	$128,400	$156,400	$180,000
Region II—HUD Field Office—Albany Office				
Washington County, NY	76,000	85,600	104,000	120,000
Ulster County, NY	112,550	126,750	154,050	177,750
Region III—HUD Field Office—Richmond Office				
Spotsylvania County and Fredericksburg City, VA	102,700	115,650	140,550	162,150
Rockingham County, VA	82,650	93,050	113,100	130,500
Warren County, VA	83,600	94,150	114,400	132,000
Isle of Wight County, VA	87,400	98,400	119,600	138,000
Region III—HUD Field Office—Wilmington Office				
New Castle County, DE	100,600	113,300	137,650	158,850
Sussex County, DE	91,200	102,700	124,800	144,000
HUD Field Office—Baltimore Office				
Kent County, MD	82,650	93,050	113,100	130,500
Caroline County, MD	73,800	83,100	101,000	116,550
Region IV—HUD Field Office—Birmingham Office				
Morgan County, AL	79,550	89,600	108,850	125,600
Region IV—HUD Field Office—Coral Gables Office				
Ft. Lauderdale—Hollywood-Pompano Beach, FL PMSA, Broward County	104,500	117,700	143,000	165,000
Ft. Pierce, FL MSA, Martin County	123,500	139,900	169,000	195,000
Miami-Hialeah, FL PMSA, Dade County	104,500	117,700	143,000	165,000

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Collier County, FL	100,700	113,400	137,800	159,000
Region IV—HUD Field Office—Orlando Office				
St. Lucie County, FL	75,900	85,450	103,850	119,450
Region IV—HUD Field Office—Louisville Office				
Louisville KY-IN MSA, Shelby County	86,350	97,250	118,200	136,380
Oldham County, Bullet County, Jefferson County	91,650	103,200	125,400	144,700
Region IV—HUD Field Office—Indianapolis Office				
Louisville, KY-IN MSA (Part)				
Floyd County	86,350	97,250	118,200	136,350
Clark County				
Harrison County				
Region VI—HUD Field Office—Houston Office				
Bryan-College Station, TX MSA, Brazos County	84,300	94,950	115,350	133,100
Region IV—HUD Field Office—San Antonio				
Burnet County	76,000	85,600	104,000	120,000
Region VI—HUD Field Office—Albuquerque				
Los Alamos County, NM	107,800	121,400	147,550	170,250
Valencia County, NM	76,000	85,600	104,000	120,000
Region VII—HUD Field Office—Des Moines				
Johnson County, IA	75,900	85,450	103,850	119,850
Region VIII—HUD Field Office—Salt Lake City				
Summit County, UT	124,200	139,900	169,950	196,100
Region VIII—HUD Field Office—Denver				
Gunnison County, CO	83,100	93,600	113,750	131,250
Region IX—HUD Field Office—Los Angeles				
San Luis Obispo County CA	124,875	140,600	170,200	197,950
Region IX—HUD Field Office—San Francisco				
Mendocino County, CA	123,500	139,100	169,000	195,000
Region IX—HUD Field Office—Santa Ana				
Inyo County, CA	98,800	111,250	135,200	156,000
Region IX—HUD Field Office—Sacramento				
Sacramento, CA, MSA, El Dorado County	124,875	140,600	170,200	197,950
Placer County				
Sacramento County				
Yolo County				
Region IX—HUD Field Office—Reno				
Douglas County, NV	92,600	104,300	126,750	146,250
Elko County, NV	80,750	90,950	110,500	127,500
Region IX—HUD Field Office—Phoenix				
Pinal County, AZ	82,400	92,850	112,800	130,150
Region X—HUD Field Office—Seattle				
Bellingham, WA, Whatcom County	119,900	135,050	164,100	189,350
Bremerton, WA MSA, Kitsap County	89,950	101,300	123,100	142,050
Clallam County	94,750	106,700	129,650	149,600
Island County	98,050	110,450	134,200	154,850
San Juan County	124,875	140,600	170,200	197,950
Skagit County	85,250	96,000	116,650	134,600
Jefferson County	104,500	117,700	143,000	165,000

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Region X—HUD Field Office—Boise				
Blaine County, ID	108,300	121,950	148,200	171,000

Dated: August 30, 1990.

Arthur J. Hill,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 90-21401 Filed 9-11-90; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Washington State Plan; Approval of Plan Supplement; Level of Federal Enforcement

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is approving the participation of the Washington Department of Labor and Industries in an agreement between that Department and the Colville Confederated Tribes as a model management agreement. This State-Tribal agreement concerns State assistance to and participation in an internal occupational safety and health program for the Tribes. In addition, pursuant to 29 CFR 1952.122, paragraph 4 of the October 2, 1979 addendum to the operational status agreement with the State of Washington, and section 18(e) of Occupational Safety and Health Act of 1970 (29 U.S.C. 667(e)) (hereinafter referred to as the Act), the Assistant Secretary has found that good cause exists for the resumption of Federal enforcement authority over establishments owned by the Colville Confederated Tribes or by enrolled members of the Colville Tribes, where such employers' establishments are located within the confines of the Colville reservation. OSHA is hereby amending 29 CFR 1952.122 and 1952.125, respectively, to reflect the change to the level of Federal enforcement authority and approval of the State-Tribal agreement.

EFFECTIVE DATE: September 12, 1990.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, room N3647, 200 Constitution Avenue, NW., Washington, DC, 20210, Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION:

A. Background

On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) announcing the approval of the Washington State plan and the adoption of subpart F to 29 CFR part 1952 containing the decision.

After initial approval, but prior to final approval of a State plan, section 18(e) of the Occupational Safety and Health Act provides for a period of concurrent Federal/State jurisdiction within a State operating an approved plan. Section 1954.3 of this chapter provides guidelines and procedures for the exercise of discretionary concurrent Federal authority to enforce Federal standards during that period. If Federal monitoring shows that a State has developed its program to a degree sufficient to justify suspension of duplicative Federal enforcement, regulations provide that OSHA through its Regional Administrator may enter into a procedural agreement with the State, usually referred to as an "operational status agreement", setting forth areas of Federal and State enforcement responsibility (29 CFR 1954.3(f)). An operational status agreement was entered into between OSHA and the State of Washington on May 30, 1975. Notice of this agreement was published in the **Federal Register** on September 25, 1975 (40 FR 44134), as corrected on December 2, 1975 (40 FR 55857), and the pertinent provisions thereof relating to the level of Federal enforcement in the State were codified at 29 CFR 1952.122. The operational status agreement was amended several times, effective October 2, 1979; May 29, 1981; April 3, 1987; and October 27, 1989; and consequent changes to the level of Federal enforcement in the State of Washington were codified at 29 CFR 1952.122 by a **Federal Register** notice on March 30, 1990 (55 FR 11906).

Regulations at 29 CFR 1952.122 provide that "The Regional Administrator will make a prompt recommendation for resumption of exercise of Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree necessary, to assure occupational safety and health protection to employees in the State of Washington." In addition, paragraph 4 of the October 2, 1979 addendum to the State's operational status agreement states that if a State "may not be able fully or effectively to exercise its enforcement authority", there may be "a limited resumption of Federal enforcement authority, which may occur at the State's request or upon the Assistant Secretary's determination, after consideration of all relevant factors and after discussion with the State, that resumed Federal enforcement authority is necessary to protect the safety and health of workers in the State."

For the past several years, OSHA has urged the State of Washington to establish legally the extent of its enforcement jurisdiction on the reservation of the Colville Confederated Tribes by fully enforcing its right to enter and inspect. However, the State has chosen to undertake negotiation with the Tribes rather than to pursue its right of entry in the courts. For this reason, the State decided not to pursue enforcement of a warrant issued in 1986 regarding the Tribally-owned Precision Pine sawmill. The State also declined to sign an addendum to its operational status agreement regarding the Colville Tribes that would be similar to the 1987 addendum regarding the Yakima Indian Nation, which provided for the resumption of Federal enforcement authority. Accordingly, as required by the Act and OSHA's regulations, James W. Lake, OSHA's Regional Administrator in Seattle, sent a memorandum on August 29, 1988 to Bruce Hillenbrand, Director of Federal-State Operations, informing him that it was appropriate for OSHA to resume Federal enforcement authority over the workplaces of Indian-owned or Tribal establishments on the Colville reservation.

At the same time, the Washington Department of Labor and Industries and the Colville Confederated Tribes began negotiating a State-Tribal model management agreement whereby Washington primarily inspects non-Indian-owned workplaces and the

Tribes primarily inspect Indian-owned or Tribal workplaces on the reservation. Under this agreement, the inspection and enforcement authority set forth in the Washington State plan will thus be applicable in inspections of non-Indian-owned workplaces on the reservation. The agreement also provides that a joint State-Tribal inspection team will inspect Indian-owned or Tribal workplaces in response to written complaints received by the State, fatalities or major accidents, or when the State and Tribes agree that an inspection should be performed jointly. The joint inspection is followed by joint inspection team citations using Tribal standards. (Section 6.1 of the agreement provides that "Indian employers shall be cited under tribal law only.") The agreement was signed by the Tribes and the State on November 17, 1989, and joint inspections are already occurring.

An important feature of this agreement is the Joint State-Tribal Committee, which develops operating procedures and long range plans concerning the occupational safety and health program on the reservation, including a training program for Tribal inspectors and employers. The Joint Committee also maintains records of all inspections performed on the reservation. Three of its six members, including the initial chairperson, are named by the State. (Federal OSHA is represented in an ex-officio capacity.) Under the agreement, a State safety and health consultant helps the Joint Committee develop Tribal safety and health standards and an accident prevention program that are equivalent to the State's, as well as criteria for evaluating the Tribes' safety and health program.

OSHA considers this agreement to be an innovative and valuable undertaking, a model self-inspection program which demonstrates the Tribes' unusual commitment to workplace safety and health. OSHA is approving the State-Tribal agreement as a model management agreement, and is approving the State's participation in this management agreement as a State-initiated supplement to the Washington State plan. Federal OSHA will closely monitor the implementation of this agreement by the State. OSHA will also require the State to monitor the Tribes' carrying out of the purposes and provisions of the agreement, and to provide a written report to the Regional Administrator each November 17 on the anniversary of the agreement.

However, although the agreement is being approved as a model self-inspection program, it does not provide for either State or Federal enforcement coverage of Indian-owned or Tribal workplaces. As already noted, section 6.1 of the agreement provides that "Indian employers shall be cited under tribal law only."; Indian employers are thus essentially exempt from citations, penalties, and abatement orders under the State's occupational safety and health law.

The Occupational Safety and Health Act establishes a program whereby all employees in all private businesses throughout the nation are protected by mandatory occupational safety and health standards, enforced either by Federal OSHA or an equally stringent program under State law. The only exception to Federal OSHA coverage of private-sector businesses is found in section 18 of the Act, which allows States to enforce their own safety and health standards under an OSHA-approved State plan. The term "State", as defined in section 3 of the Act, does not include tribal governments, and the Act contains no special provisions for Indian tribes, or for the operation of State plans by tribal governments. No specific trust responsibility is established. Under the Act, the tribes are essentially treated as any other private sector employer, and workers on the Colville reservation are entitled to the same rights and protections as other workers. Thus, OSHA is unable to approve a "Tribal State plan" or to exempt Indian or tribal enterprises from either the Federal or State Act. However, OSHA recognizes the Colville Tribes' right to conduct their own internal safety and health enforcement program at Indian-owned or Tribal workplaces, under Tribal law. The Colville Tribes are not expressly preempted under the Act as are States without OSHA-approved State plans (or their political subdivisions), and thus the Tribes, like any employer or group of employers, are free to adopt standards and conduct an internal safety and health enforcement program under any authority which exists in Tribal law. Under the Act, however, coverage of tribal enterprises by either Federal OSHA or an approved State plan is required as well. Therefore, in order to provide workers on the Colville reservation the same rights and protections as other workers, OSHA is reasserting Federal enforcement authority over Indian-owned or Tribal workplaces on the reservation.

Since March, 1988, when OSHA first reviewed the draft State-Tribal agreement, the agency has tried to resolve by negotiation the issue of an acceptable occupational safety and health program for the Colville Tribes. In an attempt to explore possible options and alternatives, OSHA has held a series of meetings and telephone conversations with representatives of the Colville Tribes, the State of Washington, and Congressional staff. Letters have also been exchanged discussing various proposals to resolve the basic conflict. The State of Washington attempted to further negotiate with the Tribes. But on June 19, 1990 the Reservation Attorney advised OSHA that the agency's final proposal was unacceptable and offered a modified proposal that still lacked enforcement coverage of Indian-owned or Tribal establishments by either Federal OSHA of the Washington State plan. Therefore, OSHA is now announcing, unilaterally, the implementation of Federal enforcement authority with respect to such establishments.

OSHA will exercise its enforcement authority to conduct inspections at Indian-owned or Tribal workplaces in response to fatalities, major accidents, or complaints received by OSHA. OSHA also retains inspection authority to carry out all other OSHA responsibilities under the Act, including workplace visits to enforce the antidiscrimination provisions of section 11(c), and the monitoring responsibilities set forth in section 18(f). When appropriate, OSHA will also conduct inspections of high hazard workplaces in accordance with its normal procedures for scheduling programmed or "general schedule" inspections. However, in recognition of the extensive safety and health program being undertaken by the Tribes under the State-Tribal agreement, OSHA will remove from its high hazard general schedule inspection list for a two year period any high hazard workplaces that have undergone a comprehensive inspection by the Joint State-Tribal Committee, as provided for in the State-Tribal agreement, once assurance of abatement of all hazards is documented.

OSHA will, in effect, provide the Indian-owned or Tribal facilities on the Colville reservation an exemption from routine wall-to-wall Federal inspections, on a per establishment basis, once an establishment has had a comprehensive State-Tribal inspection and abated all hazards. OSHA also anticipates that the existence of an extensive Tribal program under the State-Tribal agreement to conduct inspections, respond to complaints, etc., would, as a practical matter, reduce the number of complaints filed directly with Federal OSHA.

It is OSHA's intention that Federal inspection activity at Tribal establishments will include the opportunity for participation by the State-Tribal Committee or other representatives of the Tribes, provided there is no breach of the principle of advance notice and no diminution of OSHA's rights to privately question employees and to protect the confidentiality of witnesses. This participation will also include OSHA's providing to the State-Tribal Committee copies of letters to employers about complaints, plus copies of citations, penalties, and notices of contest.

B. Decision

After careful consideration, the Washington State-initiated plan change concerning participation by the State Department of Labor and Industries in the November 17, 1989 State agreement with the Colville Confederated Tribes establishing an internal occupational safety and health program for the Tribes is approved under part 1953 of this chapter. Concurrently, OSHA is announcing its resumption of Federal enforcement authority over etablishments owned by the Colville Confederated Tribes or by enrolled members of the Colville Tribes, where such employers' establishments are located within the Colville reservation. OSHA is hereby amending 29 CFR part 1952 to reflect these changes.

C. Location of Supplement for Inspection and Copying

A copy of the plan supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, room N–3700, 200 Constitution Avenue, NW., Washington, DC 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Ave., suite 715, Seattle, Washington 98101–3212; and the Department of Labor and Industries, General Administration Building, Olympia, Washington 98501.

D. Public Participation

OSHA is amending part 1952 to reflect approval of the agreement between the State and the Colville Confederated Tribes as a State-initiated change to the Washington State plan, and to reflect resumption of Federal enforcement authority over Indian-owned or Tribal establishments on the Colville reservation. In light of the extensive discussions on these issues with the Tribes and the State, OSHA believes that public participation regarding these amendments would be unnecessary.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

Signed at Washington, DC this 6th day of September 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

Title 29 of the Code of Federal Regulations is amended as follows:

PART 1952—[AMENDED]

1. The authority citation for part 1952 is revised to read as follows:

PART 1952—[AMENDED]

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 1–90 (55 FR 9033).

2. Section 1952.122 is revised to read as follows:

§ 1952.122 Level of Federal enforcement.

Pursuant to §§ 1902.20(b)(1)(iii) and 1954.3 of this chapter under which an agreement has been entered into with Washington, effective May 30, 1975, and amended several times effective October 2, 1979, May 29, 1981, April 3, 1987, and October 27, 1989; and based on a determination that Washington is operational in the issues covered by the Washington occupational safety and health plan, discretionary Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR part 1910 and 29 CFR part 1926, except as provided herein. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to enforcement of new Federal standards until the State adopts a comparable standard; Federal standards contained in 29 CFR 1910.15, Shipyard Industry, and 1910.18, Longshoring, as they relate to employment under the exclusive jurisdiction of the Federal government on the navigable waters of the United States, including dry docks and marine railways; complaints and violations of the discrimination provisions of section 11(c) of the Act (29 U.S.C. 660(c)); enforcement in situations where the State is refused entry and is unable to obtain a warrant or enforce its right of entry; enforcement of unique and complex standards as determined by the Assistant Secretary; enforcement in situations when the State is unable to exercise its enforcement authority fully or effectively; enforcement of occupational safety and health standards within the borders of all military reservations, except for civilian employers working within the Fort Lewis-Rainier Training Area, and except for all private employers and civilian contractors working within the U.S. Army Reserve facility and U.S. Navy housing complex at Fort Lawton during construction of the Fort Lawton parallel (sewer) tunnel, including any access/support roads or facilities; enforcement at establishments of employers who are enrolled members of the Yakima Indian Nation, where such employers' establishments are located within the Yakima reservation; enforcement at Tribally-owned establishments or at establishments owned by enrolled members of the Colville Confederated Tribes, where such establishments are located within the Colville reservation; and investigations and inspections for the purpose of evaluation of the Washington plan under sections 18 (e) and (f) of the Act (29 U.S.C. 667(e) and (f)). The Regional Administrator will make a prompt recommendation for resumption of exercise of Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667 (e)) whenever, and to the degree necessary, to assure occupational safety and health protection to employees in the State of Washington.

3. Section 1952.125 is amended by adding a new paragraph (b) to read as follows:

§ 1952.125 Changes to approved plans.

* * * * *

(b) In accordance with subpart E of part 1953 of this chapter, the Assistant Secretary has approved the participation of the Washington Department of Labor and Industries in its November 17, 1989, agreement with the Colville Confederated Tribes, concerning an internal occupational safety and health program on the Colville reservation. Under this agreement, Washington exercises enforcement authority over non-Indian-owned workplaces under the legal authority set forth in its State plan. (Federal OSHA will exercise enforcement authority over Indian-owned or Tribal workplaces, as provided in 29 CFR 1952.122.)

[FR Doc. 90–21295 Filed 9–11–90; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. 90363-9221]

RIN 0651-AA40

Patent and Trademark Automated Search Systems Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Lifting of suspension of final rule.

SUMMARY: The Patent and Trademark Office (Office), on December 11, 1989, amended the rules of practice in patent and trademark cases, parts 1 and 2 of title 37, Code of Federal Regulations, setting forth the fees for public access to the Office's text data bases: The Automated Patent System (APS) and the automated trademark search system (T-Search). 54 FR 50942. That final rule became effective on February 12, 1990. On that date, 37 CFR 2.6(w), dealing with T-Search fees, took effect, but was immediately suspended by the Commissioner.

The collection of the fee was initially suspended to permit users to become familiar with the T-Search system. The T-Search system has been available to the public since April 1989, a sufficient time for users to become familiar with the system. Therefore, as provided in the final rule, the Office now gives notice that the suspension is lifted. The Office will begin to collect the fees set forth in 37 CFR 2.6(w) sixty (60) days from the date of this notice. Cost estimates based on usage and actual costs are available for inspection in the Office of Long-Range Planning Evaluation, room 507, Crystal Park 1, Crystal Drive, Arlington, Virginia.

DATES: The suspension of 37 CFR 2.6(w) is lifted as of November 13, 1990.

The collection of fees under 37 CFR 2.6(w) will begin on November 13, 1990.

FOR FURTHER INFORMATION CONTACT: Frances Michalkewicz by telephone at (703) 557-1610 or by mail to her attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

Dated: September 4, 1990.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 90-21271 Filed 9-11-90; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900-AD30

Loan Guaranty: Processing Assumptions of VA Guaranteed Home Loans Under 38 U.S.C. 1814

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations for processing assumptions of VA Guaranteed home loans to implement the requirements of the Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987. Extensive changes are being made which require holders of VA guaranteed loans to examine the creditworthiness of loan purchasers and, upon approval, to release obligors' liabilities to VA. These amendments will enable holders to declare a VA guaranteed loan immediately due and payable upon an unapproved transfer. Regulatory amendments are also being made to require assumers of VA guaranteed loans to pay a fee of one-half of one percent of the loan balance to the Secretary immediately following loan settlement.

EFFECTIVE DATE: These regulations are effective October 12, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-6376.

SUPPLEMENTARY INFORMATION: The Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987 Pub. L. 100-198) created section 1817A, later renumbered by Pub. L. 100-322 as part 1814 to title 38, United States Code, which requires underwriting of assumed loans. VA must, accordingly, amend its regulations to implement the requirements of Public Law 100-298. The amendments to the 4200 series of 38 CFR part 36 will affect VA guaranteed manufactured home loans. The changes to the 4300 series of 38 CFR part 36 concern VA guaranteed loans and the amendments to the 4500 series affect VA direct loans.

On June 15, 1989, VA published in the **Federal Register** (54 FR 25469) proposed regulations to implement these requirements of Public Law 100-198. Corrections to the proposed regulations were published on June 23, 1989, (54 FR 26397) and on July 7, 1989, (54 FR 28683). A total of sixteen letters of comment were received on the proposed regulations. Fourteen were from mortgage bankers or other lenders and their trade associations or attorneys. Two letters were received from associations representing realtors.

Several comments suggested changes in the regulations which are actually restatements of parts of Public Law 100-198. One suggestion was to change the regulations to apply to all VA loans, although the law clearly states that it applies to loans for which commitments are made on or after March 1, 1988. Another suggestion was that VA change commitment date to date of note, which would not conform to the law. A third comment of this nature is that the warning concerning restricted assumability be placed above the signature line, rather than on the first page of the security instrument as required by the law. One commenter was pleased that the law provided for mandatory credit underwriting prior to assumption, but was concerned that the regulations described a procedure for appealing a disapproval to VA, as required by law (while another commenter was pleased that the regulations provided for appeal to VA). Another comment by a lender was that it did not like being required to perform a service for a fixed fee (although the proposed regulations only establish the maximum charge for processing an assumption approval, as required by law). We do not believe that any changes should be made to the proposed regulations to incorporate these comments, since the law is fairly clear with respect to these matters.

Several comments were received dealing with the proposed time frame for processing applications for assumption approvals. The mortgage banking industry was concerned about circumstances beyond the control of the lender and suggested that the processing time be extended to account for this. The Realtors' group, on the other hand, felt that the proposed time frames were somewhat lengthy already but could be accepted.

One comment had to do with the starting date of the processing time, since the proposed regulations state that this begins upon receipt of "an application for approval of the assumption." We propose to address this matter by substituting for that language the following: "A complete application package for the approval of the assumption." In § 36.4209, paragraphs (h)(1)(i)(C) and (h)(1)(ii) (D),

and § 36.4303, paragraphs (k)(1)(i)(C) and (k)(1)(ii)(D). This should clarify VA's intent that delays on the part of the purchaser in providing sufficient information necessary to process an application for assumption approval should not be assessed against the reasonale time allowed for the holder to process the application.

One suggestion dealing with the time allowed for processing an application was that the holder be prevented from accelerating a loan if the application is not processed timely. We do not believe this should be adopted, because it does not take into account delays beyond the control of the holder and could lead to inappropriate denials in order to avoid the imposition of such a penalty. Existing VA regulations provide for adjustment of a holder's claim under loan guaranty if a holder fails to comply with the law or regulations governing the program and VA's liability is increased as a result of such failure. We believe this is sufficient to ensure that holders comply with the time standards for processing assumption approval applications.

A typographical error was noted by one commenter with respect to a paragraph dealing with exceptions to payments of the funding fee. In 38 CFR 36.4312(e)(3), the limitations were incorrectly stated as appearing in paragraphs (e)(3) and (e)(4) of that section, and this should be paragraphs (e)(4) and (e)(5). This has been corrected in the final regulations.

One suggestion was that VA allow holders or servicers with automatic approval authority to utilize agents to process applications for approvals of assumptions. The proposed regulations provide only that the holder or its servicer examine the creditworthiness of the purchaser. In obtaining verificiations of income or credit hisotry and assembling a loan application package, VA has historically allowed lenders to utilize agents, which the lender remaining liable for the actions of its agents. This same policy applies to underwriting assumptions and it is not necessary that this be described in the regulations.

However, VA's Office of the Inspector General (OIG) commented that the proposed regulations do not specify the process to be followed in determining and documenting the creditworthiness of the prospective loan assumer. VA is presently drafting regulations to place existing credit underwriting standards and procedures, as contained in VA's Veterans Benefits Administration (VBA) Circular 26–80–11, last revised December 13, 1989, in the Loan Guaranty regulations. Those regulations will more fully address this matter. In the interim, these regulations are amended at 38 CFR 36.4209(h)(1)(i)(A) and 36.4303(k)(1)(i)(A) to include the requirement for a certification as to compliance with the law and regulations by a holder (or its authorized servicing agent) who is an automatic lender reporting an assumption under 38 U.S.C. 1814. An alternate certification concerning the procedures followed in obtaining credit verifications is being added to § 36.4209(h)(1)(i)(B) and § 36.4303(k)(1)(i)(B), as well as 38 CFR 36.4209(h)(1)(ii)(D) and 36.4303(k)(1)(ii)(D).

VA's OIG was also concerned that the proposed regulations do not specify who will retain records pertaining to assumption approvals. In the case where a disapproval is appealed, the credit package will be transmitted to VA and retained in the appropriate loan folder. Also, if neither the holder nor its authorized servicing agent has authority to close VA loans on an automatic basis, then the credit package will be sent to VA for review and retention in the loan folder. Since lenders presently submit credit packages with reports of loans closed on an automatic basis, it seems appropriate to require that the credit packages be sent to VA when reporting assumption of loans subject to 38 U.S.C. 1814. Accordingly, 38 CFR 36.4209(h)(1)(i)(A) and 36.4303(k)(1)(i)(A) are revised to provide for this.

Another aspect of record retention concerns the document(s) evidencing assumption of liability to indemnify VA in the event of a claim payment under loan guaranty. When a VA Application for Home Loan Guaranty and Certificate of Commitment (VA Form 26–1802a) or a Report and Certification of Loan Disbursement (VA Form 26–1820) is submitted to VA, the veteran signs a certification acknowledging personal liability for repayment of the loan. In order for VA to have similar documentation of a transferee's assumption of liability, it is appropriate to require that a copy of the transfer deed and any required assumption agreement be transmitted to VA. Accordingly, revisions are being made to 38 CFR 36.4209(h)(1)(ii)(A), 36.4209(h)(1)(ii)(D), 36.4303(k)(1)(i)(A), and 36.4303(k)(1)(ii)(D).

One commenter asked that the regulations be revised to allow a holder to designate a "local" lender with automatic approval authority to underwrite the assumption approval request. We agree with the intent of this proposal, i.e., to expedite the process by providing the buyer and seller with a local processing contact. However, we do not believe the law as presently written permits such redelegation of authority and therefore the regulations will not be revised to include it.

Another comment from a realtor's group proposed that the exceptions to acceleration upon unapproved transfer be expanded to include a case resulting from the dissolution of a non-marital relationship. This proposal was based on the fact that both the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC) have amended their guidelines to exempt dissolutions of non-marital relationships from due-on-sale provisions. FNMA and FHLMC are holders of mostly conventional loans which were originated with large downpayments. The VA program, on the other hand, is designated to assist veterans competing in the housing credit market by allowing them to obtain low or no-downpayment loans which are guaranteed by the Government. While FNMA and FHLMC will often be protected in the event of loan default by the equity in the home created by the large downpayment, VA must rely on sound credit underwriting in its efforts to avoid losses to the Government. VA loans to two or more unmarried individuals jointly purchasing a property may only be approved if each party demonstrates an ability to repay his or her portion of the loan. To allow one of the individuals to subsequently assume the obligation for repayment of the entire loan, without a review to ensure the ability to do so, would not be prudent in terms of protecting the interests of the Government in the loan. Accordingly, we do not believe the suggestion should be adopted for VA loans. This is consistent with the position of the Department of Housing and Urban Development (HUD), which requires approval of ownership changes in "shared equity mortgage arrangements" except in cases of divorce between married owners or devise of the property by will or interstate succession.

Most of the remaining comments concerned the amount of the proposed fee for processing an application for approval of an assumption. The Realtors' groups felt that the proposed fees were reasonable while the mortgage banking industry suggested an increase in the fees. The reasons given for the proposed increases are as follows:

a. Because an analysis by the Mortgage Bankers Association of America (MBA) indicates that a fee of $500 would be necessary for a holder to make a 20 percent profit on its costs of

processing an application for assumption approval;

b. To pay for the six weeks of work which one firm felt would be necessary to process an application for approval of an assumption;

c. Because the $300 does not allow for sufficient profit;

d. To be consistent with the maximums prescribed by the Department of Housing and Urban Development (HUD);

e. Because the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC) allow a charge of 1 percent of the loan balance, with minimum and maximum limits of $400 and $900;

f. Because $300 is so low that realtors will encourage non-creditworthy applicants to submit requests for approval;

g. Because lenders cannot make any money on origination and servicing of loans;

h. Because assumers are greater credit risks and $300 will not cover eventual delinquencies; and

i. Because it will be necessary for holders to train people in VA requirements to process applications.

VA performed an extensive analysis prior to proposing the fee of $300. VA's initial analysis, based on functions performed by VA personnel for a number of years in processing release of liability applications, indicated that the average time for a loan holder to process a request for approval of an assumption would be four hours. (It should be noted that VA's internal work rate standard for processing a release of liability case is 3.8704 decimal hours). Of this time three and one-half hours would be clerical in nature, i.e., transmitting an application package, verifying employment and deposits, recording basic data on an analysis form, and notifying the participants of the results. Approximately one-half hour was allocated to the underwriting function.

Based on clerical rates of $9.00 per hour and underwriter's rate of $25.00 per hour, the actual labor cost would be $88.00. In addition to basic labor costs, VA considered some expenses of overhead, as well as the additional function of collecting and transmitting to VA the funding fee required on an assumption. A total fee of $125 for actually processing the application was determined to be reasonable.

MBA's initial analysis of the cost to process a request for assumption approval was based on the functions and costs of orginating a loan. The MBA average origination expense for 1986, based on an average loan of $73,195 was given as $1,470.95. MBA then subtracted half of this as being commission for the loan officer, but added back a fourth of this as being expenses which would be incurred by a loan holder due to a loan officer's participation in the assumption process. MBA also subtracted one-eighth of the origination expense as being attributable to loan closing and then adjusted the result for inflation to arrive at its initial estimate of $765.65.

In response to VA's provision of a description of the actual functions involved in our release of liability processing, MBA provided an expanded analysis of the functions they envisioned as necessary to process an application for approval of an assumption. This analysis suggested it would take 9.35 hours of clerical work at $14.00 per hour and 1.1 hours of underwriter's time at $35.00 per hour. To this subtotal of $169.40, MBA added an overhead charge of $169.40, managerial costs of $45.00, $25.00 for collecting the funding fee, $12.75 for "fixed cost", and $84.31 for profit, to arrive at a total estimated cost of $505.86.

VA carefully reviewed each function described in MBA's analysis and revised our time and cost estimates accordingly. We were unable to agree with MBA's estimate that it would take over two hours to order credit and income verifications or more than four hours to follow up and compile the credit information. However, VA's estimates in these categories were more than doubled as a result of MBA's input.

VA's final estimate included 5.25 hours of clerical work and one-half hour of underwriting. Using MBA's rates yielded a direct labor cost of $91. To this was added $106 for indirect labor costs and overhead for building space, utilities, supplies, and equipment. VA also added $5.41 for managerial expense, but did not add additional amounts for collection of the funding fee fixed costs, as these were included in estimates of processing time and overhead, respectively. VA did consider 20 percent profit on the subtotal of $202.41 for actual expenses and arrived at a total cost of $242.89. In order to offset any miscellaneous costs not otherwise considered, VA decided to establish the maximum processing charge at $300. None of the comments provided substantive information to warrant increasing this amount.

The suggestion to raise the fee to $500 to be consistent with HUD fails to consider that HUD requires an interview with the prospective assumer. This interview must be conducted in person or, where the property securing the loan is located more than 50 miles from the nearest office of the holder, by telephone. The interview must be completed prior to the signing of the Application for Insurance (HUD 92900) and the mortgagee-designated employee must be experienced and well qualified to perform an in-depth interview. VA does not require such an interview and the savings in personnel, telephone, and interveiw office costs justify a lower assumption processing fee.

It should also be noted that HUD allows a holder to collect the assumption processing charge with the application. HUD then requires a refund of one-half of the $500 fee if an approved transfer does not close for reasons beyond the control of the purchaser. This in effect means that a holder receives a maximum of $250 for its processing and underwriting of the assumption approval. Although one comment was that the VA assumption processing charge should only be collected after processing is completed, we believe it would be difficult for a loan holder to collect after disapproval of an application. Therefore, VA's regulation allows the holder to collect the processing charge with the application and then refund $50 of it if disapproved. This in effect makes the charges for processing an assumption approval equal $250, which is consistent with HUD.

Two similar comments were that VA's refund procedure in the event of disapproval of an application should be abolished, because the same amount of work is done whether an application is approved or not. That theory fails to take into consideration a holder's record changes in the event of a completed transfer. We believe the fact that this additional work will not be necessary if the assumption is not completed justifies the refund.

Another comment dealt with the situation involving a refund to an applicant because the case had to be submitted to VA for underwriting. The commentor had no objection to the amount of $50 representing the underwriting expense, but instead felt that the amount of assumption processing charge collected should be different, rather than allowing the collection of the full charge, followed by a refund, if appropriate. VA's proposal was based on the belief that a number of loan servicers without automatic authority may be servicing loans for some holders who have such authority and others who do not. For servicers to collect the lower charge and then request an additional amount would be more burdensome than for the servicers to collect the full charge and then refund

$50 if it developed that the Lolder did not have automatic authority. Accordingly, we do not believe this procedure should be revised.

We do not believe it is appropriate to compare assumption processing charges allowed by FNMA and FHLMC to those allowed by VA. FNMA and FHLMC are both loan holders with largely conventional loan portfolios. Each of these loan holders allows a servicer to collect an assumption processing charge based on the outstanding principal balance of the loan, rather than the amount of work required to perform the service. The effect of such charges is to discourage assumption of loans with below-market interest rates, thereby benefitting the loan holder. The fact that FNMA and FHLMC allow such a large fee to be collected from a borrower for a service which benefits the holder does not mean that VA should allow such a practice in a program designed to benefit veterans.

As to suggestions that the fee might be so low that realtors would encourage non-qualified purchasers to submit applications, we doubt that this is a realistic possibility. Even if the $300 were considered expendable, which is doubtful, it is still likely that the realtor would select the best qualified of all prospective purchasers in order to ensure that a sale could be closed as quickly as possible, rather than risking the loss of any commission by submitting a questionable application. Moreover, such action by a realtor would not be in the best interest of his or her client.

The assumption processing fee is not intended to cover costs associated with defaults by transferees. In addition to ensuring that original veteran-borrowers are released of liability when they allow the assumption of their GI loans, the restrictions on assumability are also designed to allow holders to maintain the quality of loans in their portfolios by underwriting the assumptions. Thus, the fee is not intended to reimburse the holder for possible losses, but to pay a reasonable amount for the holder's efforts in achieving reductions in those losses.

Another comment on the amount of the processing fee suggested deleting the language about charging a lower fee if provided for by State law, with the reason being that most States have no such laws. If this is the case, then it should be no problem and there is no need to change the proposed regulation.

This same firm requested deletion of the requirement that security instruments contain clauses that provide for payment and/or advance of the funding fee. Since the law requires payment of the fee, the inclusion of a clause in the security instrument serves to protect the holder and VA in the event a challenge is brought against its collection. By including this provision in the security instrument, there should be no question as to the liability for the funding fee if the payment or advance is contested. The proposed regulations also require that the funding fee be transmitted to VA within fifteen days of the receipt by the holder of notice of a transfer. One firm requested clarification of "notice of transfer". We feel that the term is self-explanatory. Notice of transfer means receipt of documents which evidence a conveyance of title, i.e., a copy of the transfer deed. As to a comment questioning how an advance for a funding fee should be accounted for on the books of the holder, VA sees no reason to specifically designate this when other allowable advances, i.e., for maintenance, taxes, liquidation expenses, etc., are not similarly designated.

One final comment dealt with substitution of entitlement, since this is not specifically mentioned in the regulations. While VA has processed release of liability cases in the past, we have also handled substitution of entitlement, since only VA is empowered to issue Certificates of Eligibility for Home Loan Benefits. We expect to continue to handle the substitution of entitlement aspects of assumptions under 38 U.S.C. 1814, although the holder will process the assumption approval. Once the transfer is completed, and VA receives such advice, then the substitution of entitlement may be processed. Holders should be sufficiently knowledgeable concerning entitlement (based on origination of new GI loans) that they will be able to advise original and assuming veterans on general questions about substitution, with VA always available to answer unusual questions.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, title 5, United States Code, section 601–612. Budget projections for the next five fiscal years indicated that fewer than 10,000 assumptions will be subject to the underwriting provisions of Public Law 100–198 and the information collection and fees required are "one time" collections. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory analysis requirements of sections 603 and 604.

The regulatory amendments have been reviewed under Executive Order 12291, entitled Federal Regulations, and are not considered major regulatory changes as defined in the Executive Order. These regulations will not impact on the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more and will not cause a major increase in costs or prices for consumers, individuals industries, government agencies, or geographic regions; nor will they have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-enterprises to compete with foreign-based enterprises in domestic or export markets.

(The Catalog of Federal Domestic Assistance Program Numbers are 64.114, 64.118 and 64.119)

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—housing and community developments, Manufactured homes, Reporting and recordkeeping requirements, Veterans.

Approved: July 12, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 36, Loan Guaranty, is amended to as set forth below:

PART 36—[AMENDED]

§ 36.4202 [Amended]

1. In § 36.4202, paragraphs (b) through (f), (h) through (k) and (n), remove all quotation marks and insert in the place of each closing quotation mark, a period; and remove the word "means" and capitalize the word that follows.

2. In § 36.4202 , paragraph (l) is removed, paragraph designations (a) through (s) are removed, the definition for "Holder," formerly designated as paragraph (e), is revised and an authority citation added, all definitions are regrouped in alphabetical order, three definitions and their authority citations are added, so that revised and added text reads as follows:

§ 36.4202 Definitions.

* * * * *

Automatic lender. A lender that may process a loan or assumption without submitting the credit package to the Department of Veterans Affairs for underwriting review. Pursuant to 38 U.S.C. 1802(d) there are two categories of lenders who may process loans automatically: (1) Entities such as banks, savings and loan associations, and mortgage and loan companies that

are subject to examinations by an agency of the United States or any State and (2) lenders approved by the Department of Veterans Affairs pursuant to standards established by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 1802(d))

Credit package. Any information, report of verifications used by a lender, holder or authorized servicing agent to determine the creditworthiness of an applicant for a Department of Veterans Affairs guaranteed loan or the assumer of such a loan.

(Authority: 38 U.S.C. 1810 and 1814)

Date of first uncured default. The * * *

Default. Failure * * *

Guaranty. The * * *

Holder. The lender or any subsequent assignee or transferee of the guaranteed obligation. For purposes of the assumption review required by 38 U.S.C. 1814, the term "holder" shall also apply to the servicer of a loan guaranteed or insured under 38 U.S.C. chapter 37.

Indebtedness. The * * *

Lender. * * *

Lien. Any * * *

Loan. Unpaid * * *

Lot. A * * *

Manufactured home. * * *

Manufacturer's invoice cost. That * * *

Necessary site preparation. Those * * *

New manufactured home. * * *

Reasonable value. That * * *

Repossession—repossessed. Recovery * * *

Resale. Sale * * *

Secretary. * * *

Servicing agent. An agent designated by the loan holder as the entity to collect installments on the loan and/or perform other functions as necessary to protect the interests of the holder.

(Authority: 38 U.S.C. 1814)

Used manufactured home. * * *

§ 36.4208 [Amended]

3. In § 36.4208, paragraphs (a)(2)(ii)(*a*) through (a)(2)(ii)(*e*) are redesignated as follows:

Paragraph	*Redesignated as*
(a)(2)(ii)(*a*)	(a)(2)(ii)(A)
(a)(2)(ii)(*b*)	(a)(2)(ii)(B)
(a)(2)(ii)(*c*)	(a)(2)(ii)(C)
(a)(2)(ii)(*d*)	(a)(2)(ii)(D)
(a)(2)(ii)(*e*)	(a)(2)(ii)(E)

§ 36.4208 [Amended]

4. § 36.4208, paragraph (c), remove the word "mobile" wherever it appears and insert in its place, the word "manufactured".

§ 36.4209 [Amended]

5. In § 36.4209, paragraphs (e) and (g), remove the word "mobile" wherever it appears and insert in its place, the word "manufactured".

6. § 36.4209, paragraph (h) and the OMB control number are added to read as follows:

§ 36.4209 Reporting requirements.

* * * * *

(h) With respect to any loan for which a commitment was made on or after March 1, 1988, the Secretary must be notified whenever the holder receives knowledge of disposition of a manufactured home and/or lot securing a Department of Veterans Affairs guaranteed loan.

(1) If the seller applies for prior approval of the assumption of the loan, then:

(i) A holder (or its authorized servicing agent) who is an automatic lender must examine the creditworthiness of the purchaser and determine compliance with the provisions of 38 U.S.C. 1814. The creditworthiness review must be performed by the party that has automatic authority. If both the holder and its servicing agent are automatic lenders, then they must decide between themselves which one will make the determination of creditworthiness, whether the loan is current and whether there is a contractual obligation to assume the loan, as required by 38 U.S.C. 1814. If the actual loan holder does not have automatic authority and its servicing agent is an automatic lender, then the servicing agent must make the determinations required by 38 U.S.C. 1814 on behalf of the holder. The actual holder will remain ultimately responsible for any failure of its servicing agent to comply with the applicable law and Department of Veterans Affairs regulations.

(A) If the assumption is approved and the transfer of the security is completed, then the notice required by this paragraph shall consist of the credit package (unless previously provided in accordance with paragraph (h)(1)(i)(B) of this section) and a copy of the executed deed, bill of sale, transfer of equity agreement, and/or assumption agreement as required by the VA office of jurisdiction. The notice shall be submitted to the Department of Veterans Affairs with the Department of Veterans Affairs receipt for the funding fee provided for in §§ 36.4232(e)(3) or 36.4254(d)(3) of this part.

(B) If the application for assumption is disapproved, the holder shall notify the seller and the purchaser that the decision may be appealed to the Department of Veterans Affairs office of jurisdiction within 30 days. The holder shall make available to that Department of Veterans Affairs office all items used by the holder in making the holder's decision in case the decision is appealed to the Department of Veterans Affairs. If the application remains disapproved after 60 days (to allow time for appeal to and review by the Department of Veterans Affairs) then the holder must refund $50 of any fee previously collected under the provisions of § 36.4275(a)(3)(iii) of this part. If the application is subsequently approved and the sale is completed, then the holder (or its authorized servicing agent) shall provide the notice described in paragraph (h)(1)(i)(A) of this section.

(C) In performing the requirements of paragraphs (h)(1)(i)(A) or (h)(1)(i)(B) of this section the holder must complete its examination of the creditworthiness of the prospective purchaser and advise the seller of its decision no later than 45 days after the date of receipt by the holder of a complete application package for the approval of the assumption. The 45-day period may be extended by an interval not to exceed the time caused by delays in processing of the application which are documented as beyond the control of the holder, such as employers or depositories not responding to requests for verifications, which were timely forwarded, or followups on those requests.

(ii) If neither the holder nor its authorized servicing agent is an automatic lender, the notice to the Department of Veterans Affairs shall include:

(A) Advice regarding whether the loan is current or in default;

(B) A copy of the purchase contract; and

(C) A complete credit package developed by the holder which the Secretary may use for determining the creditworthiness of the purchaser.

(D) The notice and documents required by this section must be submitted to the Department of Veterans Affairs office of jurisdiction no later than 35 days after the date of receipt by the holder of a complete application package for the approval of the assumption, subject to the same extensions as provided in paragraph (h)(1)(i) of this section. If the assumption is not automatically approved by the holder or its authorized agent pursuant to the automatic authority provisions, $50 of any fee collected in accordance with § 36.4275(a)(3)(iii) of this part must be refunded. If the Department of

Veterans Affairs does not approve the assumption, the holder will be notified and an additional $50 of any fee collected under § 36.4275(a)(3)(iii) of this part must be refunded following expiration of the 30-day appeal period set out in paragraph (h)(1)(i)(B) of this section. If such an appeal is made to the Department of Veterans Affairs, then the review will be conducted at the Department of Veterans Affairs office of jurisdiction by an individual who was not involved in the original disapproval decision. If the application for assumption is approved and the transfer of the security is completed, then the holder (or its authorized servicing agent) shall provide the notice required in paragraph (h)(1)(i)(A) of this section.

(2) If the seller fails to notify the holder before disposing of property securing the loan, the holder shall notify the Secretary within 60 days after learning of the transfer. Such notice shall advise whether or not the holder intends to exercise its option to immediately accelerate the loan or whether an opportunity will be extended to the transferor and transferee to apply for retroactive approval of the assumption under the terms of this paragraph

(Authority: 38 U.S.C. 1814)

(Recordkeeping requirements contained in § 36.4209 were approved by the Office of Management and Budget under OMB control number 2900-0516)

§ 36.4210 [Amended]

7. In § 36.4210, paragraph (a), remove the word "mobile" wherever it appears and insert in its place, the word "manufactured".

§ 36.4220 [Amended]

8. In § 36.4220, paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6), are redesignated as paragraphs (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7), respectively, and a new paragraph (a)(2) is added to read as follows:

§ 36.4220 Substantive and procedural requirements—waiver.

(a) * * *

(2) The requirements in § 36.4209(h) of this part concerning the giving of notice in assumption cases under 38 U.S.C. 1814.

(Authority: 38 U.S.C. 1814)

* * * * *

§ 36.4232 [Amended]

9. In § 36.4232, paragraphs (e)(2), (e)(3), and (e)(4) are redesignated as paragraphs (e)(3), (e)(4) and (e)(5), respectively, the first sentence in paragraph (e)(1) is revised, a new paragraph (e)(2) is added, the first two sentences of newly-redesignated paragraph (e)(3) are revised, newly-redesignated paragraph (e)(4) is revised, and the OMB control number is added to read as follows:

§ 36.4232 Allowable fees and charges—manufactured home unit.

* * * * *

(e) (1) Subject to the limitations set out in paragraphs (e)(4) and (e)(5) of this section, a fee of 1 percent of the total amount must be paid to the Secretary in a manner prescribed by the Secretary before a manufactured home unit loan will be eligible for guaranty. * * *

(2) Subject to the limitations set out in paragraphs (e)(4) and (e)(5) of this section, a fee of one-half of one percent of the loan balance must be paid to the Secretary in a manner prescribed by the Secretary by a person assuming a loan to which section 1814 of chapter 37 of 38 U.S.C. applies. The instrument securing such a loan shall contain a provisions describing the right of the holder to collect this fee as trustee for the Department of Veterans Affairs. The loan holder shall list the amount of this fee in every assumption statement provided and include a notice that the fee must be paid to the holder immediately following loan settlement. The fee must be transmitted to the Secretary within 15 days of receipt by the holder of notice of the transfer.

(Authority: 38 U.S.C. 1814, 1829)

(3) The lender is required to pay to the Secretary the fee described in pargraaph (e)(1) of this section within 15 days after loan closing. Any lender closing a loan, subject to the limitations set out in paragraphs (e)(4) and (e)(5) of this section, who fails to submit timely payment of this fee will be subject to a late charge equal to 4 percent of the total fee due. * * *

(4) The fee described in paragraphs (e)(1) and (e)(2) of this section shall not be collected from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) or from a surviving spouse described in section 1801(b)(2) of title 38, United States Code.

(Authority: 38 U.S.C. 1829 (b))

(Recordkeeping requirements contained in § 36.4232 were approved by the Office of Management and Budget under OMB control number 2900-0516)

§ 36.4233 [Amended]

10. In § 36.4233, paragraph (a), remove the word "mobile" wherever it appears and insert in its place, the word "manufactured".

11. In § 36.4254, paragraphs (d)(2), (d)(3), and (d)(4) are redesignated as paragraphs (d)(3), (d)(4), and (d)(5), respectively, the first sentence in paragraph (d)(1) is revised, a new paragraph (d)(2) is added, the first two sentences in newly-redesignated paragraph (d)(3) are revised, and newly-redesignated paragraph (d)(4) is revised, to read as follows:

§ 36.4254 Fees and charges.

* * * * *

(d) (1) Notwithstanding the provisions of paragraph (c) of this section and subject to the limitations set out in paragraphs (d)(4) and (d)(5) of this section, a fee of 1 percent of the total loan amount must be paid to the Secretary in a manner prescribed by the Secretary before a combination manufactured home and lot loan (or a loan to purchase a lot upon which a manufactured home owned by the veteran will be placed) will be eligible for guaranty. * * *

(2) Subject to the limitations set out in paragraphs (d)(3) and (d)(4) of this section, a fee of one-half of one percent of the loan balance must be paid to the Secretary in a manner prescribed by the Secretary by a person assuming a loan to which section 1814 of chapter 37 of 38 U.S.C. applies. The instrument securing such a loan shall contain a provision describing the right of the holder to collect this fee as trustee for the Department of Veterans Affairs. The loan holder shall list the amount of this fee in every assumption statement provided and include a notice that the fee must be paid to the holder immediately following loan settlement. The fee must be transmitted to the Secretary within 15 days of receipt by the holder of notice of the transfer.

(Authority: 38 U.S.C. 1814, 1929)

(3) The lender is rquired to pay to the Secretary the fee described in paragraph (d) (1) of this section within 15 days after loan closing. Any lender closing a loan, subject to the limitations set out in paragraphs (d)(4) and (d)(5) of this section, who fails to submit timely payment of this fee will be subject to a late charge equal to 4 percent of the total fee due. * * *

(4) The fee described in paragraphs (d)(1) and (d)(2) of this section shall not be collected from a veteran who is receiving compensation or who but for the receipt of retirement pay would be entitled to receive compensation) or from a surviving spouse described in section 1801(b)(2) of title 38, United States Code.

(Authority: 38 U.S.C. 1829(b))

§ 36.4275 [Amended]

12. In § 36.4275, paragraphs (c) and (e), remove the word "mobile" wherever it appears and insert in its place, the word "manufactured".

13. In § 36.4275, paragraph (a) is revised and paragraph (a)(3) and the OMB control number are added to read as follows:

§ 36.4275 Events constituting default and acceptability of partial payments.

(a) Except as provided in paragraphs (a) (1), (a)(2) and (a)(3) of this section, the conveyance of or other transfer of title to property by operation of law or otherwise, after the creation of a lien thereon to secure a loan which is guaranteed in whole or in part by the Secretary, shall not constitute an event of default, or acceleration of maturity, elective or otherwise, and shall not of itself terminate or otherwise affect the guaranty.

* * * * *

(3) Any housing loan which is financed under 38 U.S.C. chapter 37 and to which section 1814 of that chapter applies, shall include a provision in the security instrument that the holder may declare the loan immediately due and payable upon transfer of the property securing such loan to any transferee unless the acceptability of the assumption of the loan is established pursuant to section 1814.

(i) A holder may not exercise its option to accelerate a loan upon:

(A) The creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to a transfer of rights of occupancy in the property;

(B) The creation of a purchase money security interest for household appliances;

(C) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(D) The granting of a leasehold interest of three years or less not containing an option to purchase;

(E) A transfer to a relative resulting from the death of a borrower;

(F) A transfer where the spouse or children of the borrower become joint owners of the property with the borrower;

(G) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse of the borrower becomes the sole owner of the property. In such a case the borrower shall have the option of applying directly to the Department of Veterans Affairs regional office of jurisdiction for a release of liability in accordance with § 36.4285 of this part; or

(H) A transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

(ii) Any instrument evidencing the loan (i.e., the retail installment contract, promissory note and/or mortgage or deed of trust) shall bear in a conspicuous position in capital letters on the first page of the document in type at least 2½ times larger in height than the regular type on such page the following warning: "THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT." Due to the difficulty in obtaining some commercial type sizes which are exactly 2½ times larger in height than other sizes, minor deviations will be permitted based on commercially available type sizes nearest to 2½ times the size of the print on the document. A similar warning in regular size type must appear on every assumption statement provided on a loan to which this paragraph applies.

(iii) On any loan to which 38 U.S.C. 1814 applies, the holder may charge a reasonable fee, not to exceed the lesser of (A) $300 and the actual cost of any credit report required, or (B) any maximum prescribed by applicable state law, for processing an application for assumption and changing its records. A provision authorizing the collection by the holder of this fee shall be contained in the instrument securing the loan.

(Authority: 38 U.S.C. 1804 and 1814)

* * * * *

(Recordkeeping requirements contained in § 36.4275 were approved by the Office of Management and Budget under OMB control number 2900–0516)

14. In § 36.4276, paragraph (a) is revised, to read as follows:

§ 36.4276 Advances and other charges.

(a) A holder may advance any reasonable amount necessary and proper for the maintenance or repair of the security, or for the payment of accrued taxes, special assessments or other charges which constitute prior liens, or premiums on fire or other hazard insurance against loss of or damage to such property and any such advance so made may be added to the guaranteed indebtedness. A holder may also advance the one-half of one percent funding fee due on a transfer under 38 U.S.C. 1814 when this is not paid at the time of transfer. All security instruments for loans to which 38 U.S.C. 1814 applies must include a clause authorizing an advance for this purpose if it is not paid at the time of transfer.

(Authority: 38 U.S.C. 1814)

* * * * *

15. In § 36.4277, paragraph (e)(5) is added, to read as follows:

§ 36.4277 Release of security.

* * * * *

(e) * * *

(5) The release of an obligor, or obligors, incident to the sale of property which the holder is authorized to approve under the provisions of 38 U.S.C. 1814.

(Authority: 38 U.S.C. 1814)

§ 36.4281 [Amended]

16. In § 36.4281, remove the word "him" and insert in its place, the words "him or her".

17. In § 36.4285, the first sentence in paragraph (e) is revised and an authority citation is added, and paragraph (g) is added to read as follows:

§ 36.4285 Subrogation and indemnity.

* * * * *

(e) Whenever any veteran disposes of residential property securing a guaranteed loan obtained under 38 U.S.C. 1812, and for which the commitment to make the loan was made prior to March 1, 1988, the Secretary, upon application made by such veteran, shall issue to the veteran a release relieving him or her of all further liability to the Secretary on account of such loan (including liability for any loss resulting from any default of the transferee or any subsequent purchaser of such property) if the Secretary has determined, after such investigation as the Secretary may deem appropriate, that there has been compliance with the conditions prescribed in 38 U.S.C. 1813(a). * * *

(Authority: 38 U.S.C. 1813, 1814)

* * * * *

(g) If a veteran or any other person disposes of residential property securing a guaranteed or insured loan for which a commitment was made on or after March 1, 1988, and the veteran or other person notifies the loan holder in writing before disposing of the property, the veteran or other person shall be relieved of all further liability to the Secretary with respect to the loan (including liability for any loss resulting from any default of the purchaser or any subsequent owner of the property) and the application for assumption shall be approved if the holder determines that:

(1) The proposed purchaser is creditworthy;

(2) The proposed purchaser is contractually obligated to assume the loan and the liability to indemnify the Department of Veterans Affairs for the amount of any claim paid under the guaranty as a result of a default on the loan, or has already done so; and,

(3) The payments on the loan are current.

Should these requirements be satisfied, the holder may also release the selling veteran or other person from liability on the loan. This does not apply if the approval for the assumption is granted upon special appeal to avoid immediate foreclosure.

(Authority: 38 U.S.C. 1813, 1814)

18. In § 36.4301, the definition for "Holder" is revised and its authority citation is added to read as follows:

§ 36.4301 Definitions.

* * * * *

Holder. The lender or any subsequent assignee or transferee of the guaranteed or insured obligation. For purposes of the assumption review required by 38 U.S.C. 1814, the term "holder" shall also apply to the servicer of a loan guaranteed or insured under 38 U.S.C. chapter 37.

(Authority: 38 U.S.C. 1814)

* * * * *

§ 36.4301 [Amended]

19. In § 36,4301, the following definitions and their authority citations are added in alphabetical order to read as follows:

* * * * *

Alterations. * * *

Automatic lender. A lender that may process a loan or assumption ¼without submitting the credit package to the Department of Veterans Affairs for underwriting review. Pursuant to 38 U.S.C. 1802(d) there are two categories of lenders who may process loans automatically: (1) Entities such as banks, savings and loan associations, and mortgage and loan companies that are subject to examination by an agency of the United States or any State and (2) lenders approved by the Department of Veterans Affairs pursuant to standards established by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 1802(d))

* * * * *

Cost means * * *

Credit package. Any information, reports or verifications used by a lender, holder or authorized servicing agent to determine the creditworthiness of an applicant for a Department of Veterans Affairs guaranteed loan or the assumer of such a loan.

(Authority: 38 U.S.C. 1810 and 1814)

* * * * *

Secretary. * * *

Servicing agent. An agent designated by the loan holder as the entity to collect installments on the loan and/or perform other functions as necessary to protect the interests of the holder.

(Authority: 38 U.S.C. 1814)

* * * * *

20. In § 36.4303, paragraph (k) and the OMB control number are added to read as follows:

§ 36.4303 Reporting requirements.

* * * * *

(k) With respect to any loan for which a commitment was made on or after March 1, 1988, the Secretary must be notified whenever the holder receives knowledge of disposition of the residential property securing a Department of Veterans Affairs guaranteed loan.

(1) If the seller applies for prior approval of the assumption of the loan, then:

(i) A holder (or its authorized servicing agent) who is an automatic lender must examine the creditworthiness of the purchaser and determine compliance with the provisions of 38 U.S.C. 1814. The creditworthiness review must be performed by the party that has automatic authority. If both the holder and its servicing agent are automatic lenders, then they must decide between themselves which one will make the determination of creditworthiness, whether the loan is current and whether there is a contractual obligation to assume the loan, as required by 38 U.S.C. 1814. If the actual loan holder does not have automatic authority and its servicing agent is an automatic lender, then the servicing agent must make the determinations required by 38 U.S.C. 1814 on behalf of the holder. The actual holder will remain ultimately responsible for any failure of its servicing agent to comply with the applicable law and Department of Veterans Affairs regulations.

(A) If the assumption is approved and the transfer of the security is completed, then the notice required by this paragraph shall consist of the credit package (unless previously provided in accordance with paragraph (k)(1)(i)(B) of this section) and a copy of the executed deed and/or assumption agreement as required by the Department of Veterans Affairs office of jurisdiction. The notice shall be submitted to the Department of Veterans Affairs with the Department of Veterans Affairs receipt for the funding fee provided for in § 36.4312(e)(3) of this part.

(B) If the application for assumption is disapproved, the holder shall notifiy the seller and the purchaser that the decision may be appealed to the Department of Veterans Affairs office of jurisdiction with 30 days. The holder shall make available to that Department of Veterans Affairs office all items used by the holder in making the holder's decision in case the decision is appealed to the Department of Veterans Affairs. If the application remains disapproved after 60 days (to allow time for appeal to and review by the Department of Veterans Affairs) then the holder must refund $50 of any fee previously collected under the provisions of § 36.4312(d)(8) of this part. If the application is subsequently approved and the sale is completed, then the holder (or its authorized servicing agent) shall provide the notice described in paragraph (k)(1)(i)(A) of this section.

(C) In performing the requirements of paragraphs (k)(1)(i)(A) or (k)(1)(i)(B) of this section the holder must complete its examination of the creditworthiness of the prospective purchaser and advise the seller no later than 45 days after the date of receipt by the holder of a complete application package for the approval of the assumption. The 45-day period may be extended by an interval not to exceed the time caused by delays in processing of the application which are documented as beyond the control of the holder, such as employers or despositories not responding to requests for verifications, which were timely forwarded, or followups on those requests.

(ii) If neither the holder nor its authorized servicing agent is an automatic lender, the notice to the Department of Veterans Affairs shall include:

(A) Advice regarding whether the loan is current or in default;

(B) A copy of the purchase contract; and

(C) A complete credit package developed by the holder which the Secretary may use for determining the creditworthiness of the purchaser.

(D) The notice and documents required by this section must be submitted to the Department of Veterans Affairs office of jurisdiction no later than 35 days after the date of receipt by the holder of a complete application package for the approval of the assumption, subject to the same extensions as provided in paragraph (k)(1)(i) of this section. If the assumption is not automatically approved by the holder or its authorized agent, pursuant

to the automatic authority provisions, $50 of any fee collected in accordance with § 36.4312(d)(8) of this part must be refunded. If the Department of Veterans Affairs does not approve the assumption, the holder will be notified and an additional $50 of any fee collected under § 36.4312(d)(8) of this section must be refunded following the expiration of the 30-day appeal period set out in paragraph (k)(1)(i)(B) of this section. If such an appeal is made to the Department of Veterans Affairs, then the review will be conducted at the Department of Veterans Affairs office of jurisdiction by an individual who was not involved in the original disapproval decision. If the application for assumption is approved and the transfer of security is completed, then the holder (or its authorized servicing agent) shall provide the notice required in paragraph (k)(1)(i)(A) of this section.

(2) If the seller fails to notify the holder before disposing of property securing the loan, the holder shall notify the Secretary within 60 days after learning of the transfer. Such notice shall advise whether or not the holder intends to exercise its option to immediately accelerate the loan and whether or not an opportunity will be extended to the transferor and transferee to apply for retroactive approval of the assumption under the terms of this paragraph.

(Authority: 38 U.S.C. 1814)

(Recordkeeping requirements contained in § 36.4303 were approved by the Office of Management and Budget under OMB control number 2900-0516)

§ 36.4308 [Amended]

21. In § 36.4308, paragraph (b), remove the words "paragraph (d)" and insert in their place, the words "paragraph (f)".

22. In § 36.4308, paragraph (e)(1) and (e)(2) are removed, paragraphs (b), (c), (d), (f), and (g) are redesignated as paragraphs (d), (e), (f), (g), and (h), respectively, and new paragraphs (b), (c), and the OMB control number are added to read as follows:

§ 36.4308 Transfer of title by borrower or maturity by demand or acceleration.

* * * * *

(b) (1) The Secretary may issue guaranty on loans in which a State, Territorial, or local governmental agency provides assistance to a veteran for the acquisition of a dwelling. Such loans will not be considered ineligible for guaranty if the State, Territorial, or local authority, by virtue of its laws or regulations or by virtue of Federal law, requires the acceleration of maturity of the loan upon the sale or conveyance of the security property to a person ineligible for assistance from such authority.

(2) At the time of application for a loan assisted by a State, Territorial, or local governmental agency, the veteran-applicant must be fully informed and consent in writing to the housing authority restrictions. A copy of the veteran's consent statement must be forwarded with the loan application or the report of a loan processed on the automatic basis.

(Authority: 38 U.S.C. 1803(c))

(c) Any housing loan which is financed under 38 U.S.C. chapter 37, and to which section 1814 of that chapter applies, shall include a provision in the security instrument that the holder may declare the loan immediately due and payable upon transfer of the property securing such loan to any transferee unless the acceptability of the assumption of the loan is established pursuant to section 1814.

(1) A holder may not exercise its option to accelerate a loan upon:

(i) The creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to the transfer of rights of occupancy in the property;

(ii) The creation of a purchase money security interest for household appliances;

(iii) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(iv) The granting of a leasehold interest of three years or less not containing an option to purchase;

(v) A transfer to a relative resulting from the death of a borrower;

(vi) A transfer where the spouse or children of the borrower become joint owners of the property with the borrower;

(vii) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse of the borrower becomes the sole owner of the property. In such a case the borrower shall have the option of applying directly to the Department of Veterans Affairs regional office of jurisdiction for a release of liability in accordance with § 36.4323 of this part; or

(viii) A transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

(2) The mortgage or deed of trust and the promissory note or bond evidencing a loan to which this paragraph applies shall bear in a conspicuous position in capital letters on the first page of the document in type at least 2½ times larger than the regular type on such page the following warning: "THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT". Due to the difficulty in obtaining some commercial type sizes which are exactly 2½ times larger in height than other sizes, minor deviations in size will be permitted based on commercially available type sizes nearest to 2½ times the size of the print on the document. A similar warning in regular size type must appear on every assumption statement provided on a loan to which this paragraph applies.

(Authority: 38 U.S.C. 1804 and 1814)

* * * * *

(Recordkeeping requirements contained in § 36.4308 were approved by the Office of Management and Budget under OMB control number)

23. In § 36.4312, paragraphs (e)(2), (e)(3) and (e)(4) are redesignated as paragraphs (e)(3), (e)(4) and (e)(5), respectively, paragraph (d)(8) is added, the first sentence in paragraph (e)(1) is revised, a new paragraph (e)(2) is added, the first two sentences in newly-redesignated paragraph (e)(3) are revised, and newly-redesignated paragraph (e)(4) is revised, and OMB control number to read as follows:

§ 36.4312 Charges and fees.

* * * * *

(d) * * *

(8) On any loan to which section 1814 of 38 U.S.C. chapter 37 applies, the holder may charge a reasonable fee, not to exceed the lesser of (i) $300 and the actual cost of any credit report required, or (ii) any maximum prescribed by applicable State law, for processing an application for assumption and changing its records.

(Authority: 38 U.S.C. 1814)

(e)(1) Subject to the limitations set out in paragraphs (e)(4) and (e)(5) of this section, a fee of 1 percent of the total loan amount must be paid to the Secretary in a manner prescribed by the Secretary before a home or condominium loan will be eligible for guaranty or insurance. * * *

(2) Subject to the limitations set out in this section, a fee of one-half of one percent of the loan balance must be paid to the Secretary in a manner prescribed by the Secretary by a person assuming a loan to which section 1814 of chapter 37 of 38 U.S.C. applies. The instrument securing such a loan shall contain a provision describing the right of the holder to collect this fee as trustee for

the Department of Veterans Affairs. The loan holder shall list the amount of this fee in every assumption statement provided and include a notice that the fee must be paid to the holder immediately following loan settlement. The fee must be transmitted to the Secretary within 15 days of the receipt by the holder of the notice of transfer.

(Authority: 38 U.S.C. 1814, 1829(d))

(3) The lender is required to pay to the Secretary the fee described in paragraph (e)(1) of this section within 15 days after loan closing. Any lender closing a loan, subject to the limitations set out in paragraphs (e)(4) and (e)(5) of this section, who fails to submit timely payment of this fee will be subject to a late charge equal to 4 percent of the total fee due. * * *

(4) The fees described in paragraph (e)(1) and (e)(2) of this section shall not be collected from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) or from a surviving spouse described in section 1801(b)(2) of title 38, United States Code.

(Authority: 38 U.S.C. 1829(b))

(Recordkeeping requirements contained in § 36.4312 were approved by the Office of Management and Budget under control number 2900-0516)

24. In § 36.4313, two sentences are added at the end of paragraph (a), to read as follows:

§ 36.4313 Advances and other charges.

(a) * * * A holder may also advance the one-half of one percent funding fee due on a transfer under 38 U.S.C. 1814 when this is not paid at the time of transfer. All security instruments for loans to which 38 U.S.C. 1814 applies must include a clause authorizing the collection of an assumption funding fee and an advance for this fee if it is not paid at the time of transfer.

(Authority: 38 U.S.C. 1814)

§ 36.4323 [Amended]

25. In § 36.4323, paragraph (g), remove the words "by him", and in paragraph (g)(3), remove the word "he" and insert in its place, the words "he or she".

26. In § 36.4323, the first sentence in paragraph (f) is revised and an authority citation is added, and paragraph (h) is added to read as follows:

§ 36.4323 Subrogation and indemnity

* * * * *

(f) Whenever any veteran disposes of residential property securing a guaranteed or insured loan obtained by him or her under 38 U.S.C. chapter 37, and for which the commitment to make the loan was made prior to March 1, 1988, the Secretary, upon application made by such veteran, shall issue to the veteran a release relieving him or her of all further liability to the Secretary on account of such loan (including liability for any loss resulting from any default of the transferee or any subsequent purchaser of such property) if the Secretary has determined, after such investigation as may be deemed appropriate, that there has been compliance with the conditions prescribed in 38 U.S.C. 1813. * * *

(Authority: 38 U.S.C. 1813)

* * * * *

(h) If a veteran or any other person disposes of residential property securing a guaranteed or insured loan for which a commitment was made on or after March 1, 1988, and the veteran or other person notifies the loan holder in writing before disposing of the property, the veteran or other person shall be relieved of all further liability to the Secretary with respect to the loan (including liability for any loss resulting from any default of the purchaser or any subsequent owner of the property) and the application for assumption shall be approved if the holder determines that:

(1) The proposed purchaser is creditworthy;

(2) The proposed purchaser is contractually obligated to assume the loan and the liability to indemnify the Department of Veterans Affairs for the amount of any claim paid under the guaranty as a result of a default on the loan, or has already done so; and,

(3) The payments on the loan are current.

Should these requirements be satisfied, the holder may also release the veteran or other person from liability on the loan. This does not apply if the approval for the assumption is granted upon special appeal to avoid immediate foreclosure.

(Authority: 38 U.S.C. 1814)

27. In § 36.4324, paragraph (f) is revised to read as follows:

§ 36.4324 Release of security.

* * * * *

(f) The release of the personal liability of any obligor on a guaranteed or insured obligation resultant from the act or omission of any holder without the prior approval of the Secretary shall release the obligation of the Secretary as guarantor or insurer, except when such act or omission consists of (1) failure to establish the debt as a valid claim against the assets of the estate of any deceased obligor, provided no lien for the guaranteed or insured debt is thereby impaired or destroyed; or (2) an election and appropriate prosecution of legally available effective remedies with respect to the repossession or the liquidation of the security in any case, irrespective of the identity or the survival of the original or of any subsequent debtor, if holder shall have given such notice as required by § 36.4317 of this part and if, after receiving such notice, the Secretary shall have failed to notify the holder within 15 days to proceed in such manner as to effectively preserve the personal liability of the parties liable, or such of them as the Secretary indicates in such notice to the holder; or (3) the release of an obligor, or obligors, from liability on an obligation secured by a lien on property, which release is an incident of and contemporaneous with the sale of such property to an eligible veteran who assumed such obligation, which assumed obligation is guaranteed on the assuming veteran's account pursuant to 38 U.S.C. chapter 37; or (4) the release of an obligor or obligors as provided in § 36.4314(d) of this part; or, the release of an obligor, or obligors, incident to the sale of property securing the loan which the holder is authorized to approve under the provisions of 38 U.S.C. 1814.

(Authority: 38 U.S.C. 1814)

28. In § 36.4335, paragraph (h) is added, to read as follows:

§ 36.4335 Supplementary administrative action.

* * * * *

(h) The requirements in § 36.4303(k) of this part concerning the giving of notice in assumption cases under 38 U.S.C. 1814.

(Authority: 38 U.S.C. 1814 and 1820)

§ 36.4508 [Amended]

29. In § 36.4508, in paragraph (b) remove the word "1817(a)" and insert in its place, the words "1813(a) or 1814, as appropriate", and in paragraph (c) remove the word "1817(a)" and insert in its place, the word "1813(a)".

30. In § 36.4508, paragraph (a) is revised and the OMB control number is added to read as follows:

§ 36.4508 Transfer of property by borrower.

(a) Direct loans for which commitments are made on or after March 1, 1988, are not assumable without the prior approval of the Department of Veterans Affairs or its authorized agent. The following shall apply:

(1) The Department of Veterans Affairs shall include in the mortgage or deed of trust and the promissory note or bond on any loan for which a commitment was made on or after March 1, 1988, the following warning in a conspicuous position in capital letters on the first page of the document in type at least 2½ times larger than the regular type on such page: "THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT". Due to the difficulty in obtaining some commercial type sizes which are exactly 2½ times larger in height than other sizes, minor deviations in size will be permitted based on commercially available type sizes nearest to 2½ times the size of the print on the document.

(2) The instrument securing a direct loan for which a commitment is made on or after March 1, 1988, shall include:

(i) A provision that the Department of Veterans Affairs or other holder may declare the loan immediately due and payable upon transfer of the property securing such loan to any transferee unless the acceptability of the assumption of the loan is established pursuant to section 1814. This option may not be exercised if the transfer is the result of:

(A) The creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to a transfer of rights of occupancy in the property;

(B) The creation of a purchase money security interest for household appliances;

(C) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(D) The granting of a leasehold interest of three years or less not containing an option to purchase;

(E) A transfer to a relative resulting from the death of a borrower;

(F) A transfer where the spouse or children of the borrower become a joint owner of the property with the borrower;

(G) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse of the borrower becomes the sole owner of the property. In such a case the borrower shall have the option of applying directly to the Department of Veterans Affairs regional office of jurisdiction for a release of liability under 1813(a); or

(H) A transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

(ii) A provision that a funding fee equal to one-half of one percent of the loan balance as of the date of transfer shall be payable to the Department of Veterans Affairs or its authorized agent. Furthermore, this provision shall provide that if this fee is not paid it shall constitute an additional debt to that already secured by the instrument; and,

(iii) A provision authorizing an assumption processing charge, not to exceed the lesser of $300 and the actual cost of a credit report or any maximum prescribed by applicable State law.

(Authority: 38 U.S.C. 1814)

* * * * *

(Recordkeeping requirements contained in § 36.4508 were approved by the Office of Management and Budget under OMB control number 2900-0516)

31. In § 36.4511, paragraph (d) is added, to read as follows:

§ 36.4511 Advances after loan closing.

* * * * *

(d) The Department of Veterans Affairs may treat as an advance and add to the mortgage balance the one-half of one percent funding fee due on a transfer under 38 U.S.C. 1814 when this is not paid at the time of transfer.

(Authority: 38 U.S.C. 1814)

[FR Doc. 90-21352 Filed 9-11-90; 8:45 am]

BILLING CODE 8320-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201-23 and 201-39

[FIRMR Amdt. 19]

Implementation of Title VIII, Paperwork Reduction Reauthorization Act of 1986, Regarding Automatic Data Processing Equipment; Correction

AGENCY: Information Resources Management Service, GSA.

ACTION: Final rule; correction.

SUMMARY: This document makes typographical corrections to a final rule regarding the Paperwork Reduction Reauthorization Act of 1986 (Pub. L. 99-500) that began on page 30702 in the Federal Register of Friday, July 27, 1990, (55 FR 30702).

FOR FURTHER INFORMATION CONTACT: William R. Loy, Regulations Branch (KMPR), Office of Information Resources Management Policy, telephone (202) 501-3194 (v) or FTS 241-3194 (v) or (202) 501-0657 (tdd) or FTS 241-0657 (ttd).

In FIRMR Amendment 19 (FR Doc. 90-16893), beginning on page 30702 in the issue of Friday, July 27, 1990, make the following corrections:

§ 201-23.103-1 [Corrected]

1. On page 30708, in the first column, in § 201-23.103-1(c)(4) in the second line, "services and support services" is corrected to read "maintenance, and services".

§ 201-23.103-1 [Corrected]

2. On the same page, in the same column, in § 201-23.103-1(c)(4), in the seventh line, "services, or support services" is corrected to read "maintenance, or services".

§ 201-39.100 [Corrected]

On page 30710, in the second column, in § 201-39.100(c)(2), in the last line, insert the word "provision" before "change".

Dated: September 6, 1990.

William R. Loy,

Acting Chief, Regulations Branch.

[FR Doc. 90-21313 Filed 9-11-90; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

RIN 0905-AC71

Grants for Faculty Training Projects in Geriatric Medicine and Dentistry

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: This rule establishes regulations which govern the program for Grants for Faculty Training Projects in Geriatric Medicine and Dentistry authorized by section 789(b) (formerly section 788(e)) of the Public Health Service Act (the Act). The final regulations also incorporate amendments to the program made by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, the Health Professions Reauthorization Act of 1988, and the Drug-Free Workplace Act of 1988. The program supports projects which provide training for physicians and dentists who plan to teach geriatric medicine or geriatric dentistry.

EFFECTIVE DATE: These regulations are effective September 12, 1990.

FOR FURTHER INFORMATION CONTACT: Marilyn H. Gaston, M.D., Director, Division of Medicine, Bureau of Health

Professions, Health Resources and Services Administration, Room 4C–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: 301–443–6190.

SUPPLEMENTARY INFORMATION: On November 3, 1988, the Assistant Secretary for Health, with the approval of the Secretary of Health and Human Services, published in the Federal Register (53 FR 44496), a Notice of Proposed Rulemaking (NPRM) to add a new subpart PP to part 57 of title 42 of the Code of Federal Regulations to implement section 788(e) of the Act, as amended by Public Law 99–660, the Omnibus Health Act of 1986, enacted on November 14, 1986; and Public Law 100–177, the Public Health Service Amendments of 1987, enacted on December 1, 1987. The Health Professions Reauthorization Act of 1988 (title VI of Public Law 100–607), enacted on November 4, 1988, added a new section 789(b) to the Act, entitled, "Geriatric Training." Section 788(e) was amended to remove authority for geriatric training.

Section 789(b) authorizes the Secretary to make grants to and enter into contracts with schools of medicine, schools of osteopathic medicine, teaching hospitals, and graduate medical education programs to provide support (including residencies, traineeships and fellowships) for projects to train physicians and dentists who plan to teach geriatric medicine or geriatric dentistry.

Public Law 100–607 added the term "residencies" as a type of financial assistance for participating fellows. Participants in programs supported by this authority receive fellowship support at levels established by the Public Health Service, based on an individual's training and experience. There are currently no accredited residency programs in geriatrics and no process in place to accredit such programs. Therefore, this new provision is not being implemented at this time. If accredited geriatric residency training programs are established in the future, this provision will be implemented.

The Act requires that the geriatrics training be provided through one or both of the following projects: (1) A 1-year retraining program in geriatrics for physicians who are faculty members in departments of internal medicine, family medicine, gynecology, geriatrics, and psychiatry at schools of medicine and osteopathic medicine, and dentists who are faculty members at schools of dentistry or at hospital departments of dentistry; or (2) a 1-year or 2-year internal medicine or family medicine fellowship program with emphasis in geriatrics, which shall provide training in clinical geriatrics and geriatric research for physicians who have completed graduate medical education programs in internal medicine, family medicine, psychiatry, neurology, gynecology, or rehabilitation medicine, and dentists who have completed postdoctoral dental education programs.

Section 789(b) further requires each grant project to:

1. Be staffed by full-time teaching physicians who have experience or training in geriatric medicine;

2. Be staffed, or enter into an agreement with an institution staffed, by full-time or part-time teaching dentists who have experience or training in geriatric dentistry. (The phrase "or enter into an agreement with an institution staffed" was added by the Health Professions Reauthorization Act of 1988 to provide flexibility in using a meaningful pool of dental faculty who might otherwise be excluded from participation in the project.)

3. Be based in a graduate medical education program in internal medicine or family medicine, or in a department of geriatrics in existence as of December 1, 1987;

4. Provide participants in the project with exposure to a population of elderly individuals; and

5. Provide training in geriatrics and exposure to the physical and mental disabilities of elderly individuals through a variety of service rotations, such as geriatric consultation services, acute care services, dental services, geriatric psychiatry units, day and home care programs, rehabilitation services, extended care facilities, geriatric ambulatory care and comprehensive evaluation units, and community care programs for elderly mentally retarded individuals.

The public comment period on the proposed regulations closed on January 3, 1989. The Department received 8 written comments. A summary of the comments, the Department's responses to the comments, and technical revisions are discussed below.

Section 57.4102 Definitions

The Department received comments on the term "fellowship program" as proposed below:

Fellowship program means a 1- or 2-year organized training effort sponsored by an allopathic or osteopathic medical school, a teaching hospital, or a graduate medical education program which is designed to provide training for: (a) Physicians who have completed graduate medical education programs in internal medicine, family medicine (including osteopathic general practice), psychiatry, neurology, gynecology, or rehabilitation medicine; and (b) dentists who have completed postdoctoral dental education programs. The minimal acceptable level of postdoctoral preparation for medical primary care disciplines is 3 years of formal training or board certification.

One respondent requested that the requirement for fellowship candidacy be revised to include individuals who have graduated from a dental school and practiced dentistry for 4 years or more or who have served in a teaching capacity on the faculty of a dental school for more than 1 year. The respondent stated that this change would allow the recruitment of individuals who have decided to pursue an academic career in geriatric dentistry based on either practice or faculty experience.

The Department has not accepted this suggestion because the statute requires that dentists participating in the 1- or 2-year fellowship program must have completed a postdoctoral dental education program. However, a dental faculty member without postdoctoral dental training would be eligible to participate in the 1-year retraining program.

A respondent commented that requiring a physician or dentist to have completed a 3-year postdoctoral education program to participate in a fellowship program would make dentists who had completed a dental general practice residency or advanced education in general dentistry ineligible. The respondent pointed out that these programs are 1-year in duration and should be included under the definition of "postdoctoral dental education."

The Department notes that the requirement for 3 years of formal training refers only to medical primary care disciplines, not to dentistry. However, in response to this concern, the Department has expanded the provision in the final regulations to clarify that the minimal acceptable level of postdoctoral preparation for dentists is at least 1 year of formal training in a postdoctoral dental education program.

The same respondent further suggested that some of the projects be administratively located at dental schools with the medical staff added to complete the team. The Department has not accepted this suggestion because the statute requires that eligible projects be based in a graduate medical education program in internal medicine or family medicine, or in a department of geriatrics in existence as of December 1, 1987.

In addition, the Secretary has made the following revisions to the proposed regulations to implement amendments made by Pub. L. 100–607, enacted on November 4, 1988.

Public Law 100–607 amended the statutory requirement that a project must be staffed by full-time or part-time teaching dentists who have experience or training in geriatric dentistry, to provide that the requirement may be met by entering into an agreement with an institution staffed by such dentists. This change has been incorporated into the definition of "full-time teaching dentist" and also into a new definition of "part-time teaching dentist," in § 57.4102, entitled "Definitions.", and in paragraph (e) of § 57.4105, entitled "Project requirements."

Section 57.4105 Project Requirements

Four commenters urged the inclusion of psychiatry graduate medical education programs and geriatric psychiatry training and fellowships as training programs eligible for grant support. They stressed the need for geriatric psychiatrists to train other practitioners, including other psychiatrists, to diagnose and assess mental illnesses and emotional problems in the elderly and assure that nonpharmacological interventions are considered in the treatment of the elderly.

The statute specifically states that a project be under the programmatic control of a graduate medical education program in internal medicine, family medicine, or a department of geriatrics in existence as of December 1, 1987. This statutory provision does not include a psychiatry graduate medical education program or department of psychiatry. However, physicians who have completed graduate medical education programs in psychiatry are eligible to participate in the internal medicine and family medicine fellowship programs and faculty members in departments of psychiatry are eligible to participate in the retraining program.

One respondent asserted that the proposed composition of the population of elderly individuals and the proposed required service rotations did not adequately address individuals who have physical disabilities and the medical rehabilitation services that deal with physical and mental disabilities. The commenter suggested that the regulation require training experience in "inpatient or outpatient rehabilitation settings, including rehabilitation hospitals or rehabilitation units in acute hospitals or outpatient rehabilitation departments of hospitals or comprehensive rehabilitation facilities."

The Department recognizes the value of training in rehabilitation for physicians and dentists, who will be teaching geriatrics. However, the Secretary does not consider it appropriate to restrict participation in this program only to applicants with the necessary faculty and facilities for conducting rehabilitation training. Therefore, the requirements under paragraphs (f) and (g) of § 57.4105 are retained as proposed.

These final regulations also include a number of additional technical and ministerial changes to the proposed regulations. These revisions are necessary in order to incorporate: (1) Amendments made by the Health Professions Reauthorization Act of 1988, title VI of Public Law 100–607, and (2) current departmental grants policy language and other changes which are of a technical nature. Since these amendments are of a technical and ministerial nature, the Secretary has determined pursuant to 5 U.S.C. 553 and departmental policy that it is unnecessary and impractical to follow proposed rulemaking procedures. These revisions are summarized below according to the section numbers and titles of the regulations:

1. Revise the authority citation to include the new section designation and the United States Code citation change, in accordance with Public Law 100–607.

2. Revise the word "osteopathy" to read "osteopathic medicine" where it appears in the text of the regulations, in accordance with Public Law 100–607. Also, the words "nonprofit private" are revised to read "private nonprofit" wherever they appear in the text of the regulations.

3. Revise § 57.4101, entitled "To what projects do these regulations apply?", to change the section number of the Public Health Service Act under which the grant awards to eligible schools and programs are made, and add the United States Code citation by inserting after the words "programs under" the phrase, "section 789(b) of the Act (42 U.S.C. 295g–9(b))", in accordance with Public Law 100–607.

4. Revise § 57.4102, entitled "Definitions.", to:

(a) Revise the definitions of "fellow" and "project director" by striking out the reference to "section 788(e)" and insert in lieu thereof "section 789(b)", in accordance with Public Law 100–607; and

(b) Modify the definition of "fellowship program" by inserting the word "allopathic" before the words "medical primary care disciplines" in the second paragraph to clarify that this minimal acceptable level of postdoctoral preparation does not apply to osteopathic medicine. The postdoctoral preparation requirement for osteopathic medicine can be met by the completion of a 1-year internship and a 1- or 2-year residency training program.

5. Revise § 57.4105, entitled "Project requirements.", to insert the word "administrative", which was inadvertently omitted in the NPRM, as a component of a retraining program experience. This is consistent with the training provided in fellowship programs.

6. Revise § 57.4106, entitled "How will applications be evaluated?" by amending paragraph (a) at the end of the first sentence, to change the number designation of the section of the Act that applies to application evaluation in this subpart by substituting "section 789(b)" in lieu of "section 788(e)", in accordance with Pub. L. 100 607.

7. Revise § 57.4109, entitled "Who is eligible for financial assistance as a fellow?", to amend paragraph (a) by substituting the phrase "a citizen or national of the United States" in lieu of "a United States citizen, a United States National", and by removing the parenthetical acronymns after the words "Commonwealth of the Northern Mariana Islands", the "Republic of the Marshall Islands", and the "Federated States of Micronesia" to reflect current departmental grants policy language.

8. Revise § 57.4113, entitled "For what purposes may grants funds be spent?", by substituting the words "these regulations" in lieu of the phrase "the requirements of this notice" at the end of paragraph (a), to reflect the final stage of rulemaking.

9. Revise § 57.4114, entitled "What additional Department regulations apply to grantees?", by:

(a) Changing the footnote number and the footnote reference in the text cited after "45 CFR part 83" from "1" to "2"; and

(b) Adding new Code of Federal Regulations citations to the regulations to bring this grant program into compliance with governmentwide requirements established for this Department under—

(1) 45 CFR part 76, in accordance with Public Law 100–690, title V, subtitle D, the Drug-Free Workplace Act of 1988, enacted on November 18, 1988, and a Notice and Interim-Final Rules, published in the **Federal Register** on January 31, 1989 (54 FR 4946), and

(2) 45 CFR part 93, in accordance with Public Law 101–121, section 319, the

Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, enacted on October 23, 1989, and an Interim-Final Rule, published in the Federal Register on February 26, 1990 (55 FR 6736).

10. Revise § 57.4116, entitled "Additional conditions.", to reflect current departmental grants policy language.

11. Cite the Office of Management and Budget (OMB) approval number in those sections which contain recordkeeping and reporting requirements.

Regulatory Flexibility Act and Executive Order 12291

These regulations govern a financial assistance program in which participation is voluntary. The rule will neither exceed the threshold level of $100 million established in section (b) of Executive Order 12291 nor does it meet any of the additional criteria contained in the Executive Order. For these reasons, the Secretary has determined that this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

This final rule contains information collections which have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and assigned control number 0915–0132. The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data, needed, and completing and reviewing the collection of information.

Title: Grants for Faculty Training Projects in Geriatric Medicine and Dentistry.

Description: Recipients of grants need to collect and maintain informatin on qualifications of physicians and dentists receiving faculty fellowships. Individuals withdrawing from a program must be notified by the grantee of the disposition of refunded tuition.

Description of respondents: Nonprofit institution, individuals or households.

Estimated annual reporting and recordkeeping burden:

Section No.	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
57.4110(a) (Reporting)	60	1	15 minutes	15
57.4110(a) (Recordkeeping)	15	1	1 hour	15
57.4112(b) (Disclosure)	6	1	15 minutes	1.5
57.4115 (Reporting)	15	1	4 hours	60

We received no public comments on the estimated public reporting burden, and it remains the same as in the proposed rule.

List of Subjects in 42 CFR Part 57

Dental health, Education of the disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs—education, Grant programs—health, Health facilities, Health professions, Loan programs—health, Medical and dental schools, Student aid.

Accordingly, 42 CFR part 57 is amended as set forth below:

Dated: May 14, 1990.

(*Catalog of Federal Domestic Assistance, No. 13.156,* Grants for Faculty Training Projects in Geriatric Medicine and Dentistry)

James O. Mason,

Assistant Secretary for Health.

Approved: August 27, 1990.

Louis W. Sullivan,

Secretary.

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

1. 42 CFR part 57 part is amended by adding a new subpart PP, entitled, "Grants for Faculty Training Projects in Geriatric Medicine and Dentistry" to read as follows:

Subpart PP—Grants for Faculty Training Projects in Geriatric Medicine and Dentistry

Sec.

Subpart PP—Grants for Faculty Training Projects in Geriatric Medicine and Dentistry

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); sec. 789(b) of the PHS Act, as amended by Pub. L. 100–607, 102 Stat. 3136–3138 (42 U.S.C. 295g–9(b)).

§ 57.4101 To what projects do these regulations apply?

These regulations apply to grants to eligible schools and programs under section 789(b) of the Act (42 U.S.C. 295g–9(b)) for the purpose of providing support for projects to train physicians and dentists who plan to teach geriatric medicine or geriatric dentistry, including traineeships, and fellowships for participants in these programs.

§ 57.4102 Definitions.

Act means the Public Health Service Act, as amended.

Budget period means the interval of time (usually 12 months) into which the project period is divided for budgetary and funding purposes.

Council means the National Advisory Council on Health Professions Education established by section 702 of the Act.

Elderly means a population with health care conditions and needs which differ significantly from those of younger people, which are often complicated by the physical, behavioral, and social changes associated with aging. This would include all persons over 60, but may include slightly younger people

who are subject to similar physical and/or mental conditions.

Extended care facility means a health care institution or distinct part of an institution that furnishes, in lieu of hospitalization, room and board and medically-perscribed skilled nursing care or rehabilitative services 24 hours a day by an organized medical staff.

Fellow means an allopathic physician, osteopathic physician, or dentist participating in a retaining program or fellowship program supported by a grant under section 789(b).

Fellowship program means a 1- or 2-year organized training effort sponsored by an allopathic or osteopathic medical school, a teaching hospital, or a graduate medical education program which is designed to provide training for—

(1) Physicians who have completed graduate medical education program in internal medicine, family medicine (including osteopathic general practice), psychiatry, neurology, gynecology, or rehabilitation medicine; and

(2) Dentists who have completed postdoctoral dental education programs. The minimal acceptable level of postdoctoral preparation for allopathic medical primary care disciplines is 3 years of formal training or board certification, and, for dentists, is completion of at least 1 year of formal training in a postdoctoral dental education program.

Full-time teaching physician means an allopathic or osteopathic physician who is a faculty member of the grantee institution and who is engaged in teaching, research, clinical, and administrative activities normally performed by teaching faculty employed on a full-time basis, as defined by the grantee institution.

Full-time teaching dentist means a dentist who is a faculty member and who is engaged in teaching, research, clinical, and administrative activities normally performed by teaching faculty employed on a full-time basis, as defined by the institution. The dental faculty member does not have to be employed by the grantee institution but can be dental faculty member at another institution which has an affiliation agreement with the grantee institution.

Full-time training means full-time training, as defined by the grantee institution.

Geriatric dentistry means the provision of dental care for elderly persons, particularly those with one or more chronic or debilitating, physical or mental illnesses with associated medication or psychosocial problems.

Geriatric medicine means the prevention, diagnosis, and medical treatment of illness and disability as required by the needs of the elderly.

Graduate medical education program means a program sponsored by a school of medicine, a school of osteopathic medicine, a hospital, or a public or private nonprofit institution, which:

(1) Offers postgraduate medical training in the specialties and subspecialties of medicine; and

(2) has been accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association through its Committee on Postdoctoral Training.

Grantee means an entity that receives a grant and assumes legal and financial responsibility both for the awarded funds and for the performance of the grant-supported activity.

Longitudinal care means the provision of medical or dental care to the same panel of elderly patients for a period of at least 9 months in each year of training.

Part-time teaching dentist means a dentist who is a faculty member and who is engaged in teaching, research, clinical, and administrative activities normally performed by teaching faculty employed on a part-time basis, as defined by the institution. The dental faculty member does not have to be employed by the grantee institution but can be a dental faculty member at another institution which has an affiliation agreement with the grantee institution.

Postdoctoral dental education program means a program sponsored by a school of dentistry, a hospital, or a public or private nonprofit institution, which:

(1) Offers postdoctoral training in the specialties of dentistry, advanced education in general dentistry, or a dental general practice residency; and

(2) Has been accredited by the Commission on Dental Accreditation.

Primary care means health care which may be initiated by the patient or the provider, or both, in a variety of settings, and which consists of a broad range of personal health care services including promotion and maintenance of health, prevention of illness and disability, basic care during acute and chronic phases of illness, guidance and counseling of individuals and families, and referral to other health care providers and community resources when appropriate. In providing the services:

(1) The physical, emotional, social, and economic status of the patient is considered in the context of his or her cultural and environmental back ground, including the family and community; and

(2) The patient is provided timely access to the health care system.

Project means all activities, including training programs, specified or described in a grant application as approved for funding.

Project director means an individual designated by the recipient and approved by the Secretary to direct the project being supported under section 789(b).

Project period means the total time for which support for a project has been approved, including any extension thereof, by the awarding unit.

Retraining program means a 1-year program of full-time individualized training in clinical geriatrics and geriatric research for physicians who are faculty members in departments of internal medicine, family medicine (including osteopathic general practice), gynecology, geriatrics, or psychiatry at schools of medicine and osteopathic medicine, and dentists who are faculty members at schools of dentistry or at hospital departments of dentistry.

School of medicine or *school of osteopathic medicine* means a public or private nonprofit school which provides training leading, respectively, to a degree of doctor of medicine or a degree of doctor of osteopathic medicine, and which is accredited as provided in section 701(5) of the Act.

Secretary means the Secretary of Health and Human Services, and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

State means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

Teaching hospital means a public or private nonprofit hospital which is:

(1) Accredited by the Joint Commission on Accreditation of Hospitals or the American Osteopathic Association; and

(2) Operates at least one postdoctoral training program which is fully or provisionally accredited by the Accreditation Council for Graduate Medical Education or approved by the American Osteopathic Association.

§ 57.4103 Who is eligible to apply for a grant?

Public or private nonprofit schools of medicine, schools of osteopathic

medicine, teaching hospitals, and graduate medical education programs located in a State are eligible to apply for a grant under this subpart. Each eligible applicant desiring a grant under this subpart shall submit an application in the form and at such time as the Secretary may prescribe.[1]

§ 57.4104 For what projects may grant funds be requested?

Each eligible applicant must propose a fellowship program or a retaining program.

§ 57.4105 Project requirements.

A project supported under this subpart must be conducted in accordance with the following requirements:

(a) The project must have a project director who is employed full time by the grantee institution;

(b) Projects must have an appropriate administrative and organizational plan, and adequate faculty, physical, and administrative resources for the achievement of stated objectives;

(c) Projects must systematically evaluate the training program, including the performance and competence of trainees and faculty, the administration of the program, and the degree to which program and educational objectives are met;

(d) The project must be under the programmatic control of a graduate medical education program in internal medicine or family medicine (including osteopathic general practice) or in a department of geriatrics in existence as of December 1, 1987;

(e) The project must be staffed by at least two physicians in full-time teaching positions who have experience or training in geriatric medicine and be staffed, or enter into an agreement with an institution staffed, by at least one dentist who is employed in a full- or part-time teaching position and has experience or training in geriatrics;

(f) The project must provide fellows with exposure to a diverse population of elderly individuals. The population must include:

(1) Elderly in various levels of wellness from fully independent and well, to patients confined to bed with serious illness; and

(2) Elderly from a range of socioeconomic, racial and ethnic backgrounds;

(g) The project must provide medical and dental training experiences in:

(1) An ambulatory care setting;

(2) An inpatient service; and

(3) An extended care facility.

During the course of the training, each fellow must receive experience in primary care, consultation, and longitudinal care;

(h) Fellowship programs must have a curriculum which includes training in clinical geriatrics, teaching skills, administrative skills, and research skills for physicians and dentists;

(i) Retraining programs must provide 1 year of full-time training suited to the individual needs of each fellow. To assure that the needs of all fellows can be met, each retraining programs must have the resources available to provide clinical, research, administrative, and teacher-training experience; and

(j) Effective in the second year of grant support, a minimum of three entering fellows, including at least one physician and one dentist, must be enrolled in each training program for which grant support is received.

§ 57.4106 How will applications be evaluated?

(a) After consultation with the National Advisory Council on Health Professions Education established by section 702 of the Act, the Secretary will approve projects which best promoted the purposes of section 789(b) of the Act. The Secretary will consider, among other factors:

(1) The extent to which the proposed training program will prepare physicians and dentists to perform the research, teaching, administrative and clinical duties of a faculty member specializing in geriatrics;

(2) The degree to which the project plan adequately provides for meeting the requirements set forth in § 57.4105;

(3) The administrative, management and resource capability of the applicant to carry out the proposed project in a cost-effective manner;

(4) The potential for the applicant to continue the program without Federal support after completion of the requested project period; and

(5) The extent to which the project will increase the number of geriatric fellowship and retraining positions available for individuals who want to prepare for academic careers in geriatric medicine and dentistry.

(b) In determining the funding of applications approved under paragraph (a) of this section, the Secretary will consider any special factors relating to national needs as the Secretary may from time to time announce in the **Federal Register**.

§ 57.4107 How long does grant support last?

(a) The notice of grant award specifies the length of time the Secretary intends to support the project without requiring the project to recompete for funds. This period, called the project period, will not exceed 3 years.

(b) Generally, the grant will initially be funded for 1 year, and subsequent continuation awards will also be for 1 year at a time. Decisions regarding continuation awards and the funding levels of these awards will be made after consideration of such factors as the grantee's progress and management practices, existence of legislative authority, and the availability of funds. In all cases, continuation awards require a determination by the Secretary that continued funding is in the best interest of the Federal Government.

(c) Neither the approval of any application nor the award of any grant shall commit or obligate the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application. For continuation support, grantees must make separate application at such time and in such a form as the Secretary may prescibe.

§ 57.4108 What financial support is available to fellows?

Expenditures from funds are limited to:

(a) Tuition and fees, in accordance with the established rates of the institution, except as limited by the Secretary;

(b) Stipend support, in accordance with established Public Health Service postdoctoral stipend levels; and

(c) Travel to field training if the site is beyond a reasonable commuting distance and requires the fellow to establish a temporary new residence. However, fellowship funds may not be used for daily commuting from the new place of residence to the field training headquarters.

§ 57.4109 Who is eligible for financial assistance as a fellow?

To be eligible for a fellowship an individual must:

(a) Be a resident of the United States and either a citizen or national of the United States, an alien lawfully admitted for permanent residence in the United States, a citizen of the Commonwealth of the Northern Mariana Islands, a citizen of the Trust Territory of the Pacific Islands (TTPI) (consisting of the Republic of Palau), or a citizen of the Republic of the Marshall Islands or

[1] Applications and instructions (PHS Form 6025-1, OMB # 0915-0060) may be obtained from the Grants Management Officer, Bureau of Health Professions, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

the Federated States of Micronesia (both formerly part of the TTPI);

(b) Be a physician or a dentist enrolled in a "fellowship program" or a "retraining program" as defined in § 57.4102; and

(c) Not be receiving concurrent support for the same training from another Federal education award which provides a stipend or otherwise duplicates financial provisions except education benefits under the Veteran's Readjustment Benefits Act, and loans from Federal sources.

§ 57.4110 What are the requirements for fellowships and the appointment of fellows?

(a) The grantee must complete a statement which documents the appointment of each fellow. To complete this statement the grantee must require the provision of information and documentation of eligibility by each fellow. The statement of appointment must be completed by the beginning of the training period or as soon thereafter as possible if the fellow receives notice of his or her fellowship appointment after the training period has begun. The statement of appointment must include information to document the eligibility of the fellow and certify that there will be compliance with all applicable Public Health Service terms and conditions governing the appointment. The program director must sign the statement on behalf of the grantee, and the fellow must sign it thus certifying the statements are true and complete. The original copy of the statement must be retained by the grantee to be available for program review and financial audit. A copy shall be provided to the fellow for his or her records.

(b) The grantee may not require fellows to perform work which is not an integral part of the geriatric training program, or to perform services which detract from or prolong their training.

(Approved by the Office of Management and Budget under control number 0915-0132)

§ 57.4111 Duration of fellowships.

An appointment to a fellowship may be made for a period not to exceed 12 months. Fellowship assistance for participants in a 1-year fellowship programs and retraining programs is limited to 12 months. Participants in 2-year fellowship programs may receive a second 12-month appointment for a total period of 24 months.

§ 57.4112 Termination of fellowships

(a) The grantee must terminate a fellowship:

(1) Upon request of the fellow;

(2) If the fellow withdraws from the grantee institution; or

(3) If the grantee determines that:

(i) The fellow is no longer an active participant in the training program; or

(ii) The fellow is not eligible or able to continue in accordance with its standards and practices.

(b) The grantee must deposit any Federal portion of the tuition refund owed to a fellow into the grant account and provide written notice to the fellow that it is doing so.

(Approved by the Office of Management and Budget under control number 0915-0132)

§ 57.4113 For what purposes may grant funds be spent?

(a) A grantee shall only spend funds it receives under this subpart according to the approved application and budget, the authorizing legislation, terms and conditions of the grant award, applicable cost principles specified in subpart Q of 45 CFR part 74, and this subpart.

(b) Grantees may not spend grant funds for sectarian instruction or for any religious purpose.

(c) Any balance of federally-obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward to the next budget period, for use as prescribed by the Secretary, provided a continuation award is made. If at any time during a budget period, it becomes apparent to the Secretary that the amount of Federal funds awarded and available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for the period, the Secretary may adjust the amounts awarded by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

§ 57.4114 What additional Department regulations apply to grantees?

Several other regulations apply to grants under this subpart. These include, but are not limited to:

42 CFR part 50, subpart D—Public Health Service grant appeals procedure
45 CFR part 16—Procedures of the Departmental Grant Appeals Board
45 CFR part 46—Protection of human subjects
45 CFR part 74—Administration of grants
45 CFR part 75—Informal grant appeals procedures
45 CFR part 76—Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)
45 CFR part 80—Nondiscrimination under programs receiving Federal assistance through the department of Health and Human Services effectuation of title VI of the Civil Rights Act of 1964
45 CFR part 81—Practice and procedure for hearings under part 80 of this title
45 CFR part 83—Regulation for the administration and enforcement of sections 799A and 845 of the Public Health Services Act [2]
45 CFR part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance
45 CFR part 93—New restrictions on lobbying

§ 57.4115 What other audit and inspection requirements apply to grantees?

Each grantee must, in addition to the requirements of 45 CFR part 74, meet the requirements of section 705 of the Act, concerning audit and inspection.

(Approved by the Office of Management and Budget under control number 0915-0132)

§ 57.4116 Additional conditions.

The Secretary may impose additional conditions on any grant award before or at the time of any award if he or she determines that these conditions are necessary to assure or protect the advancement of the approved activity, the interest of the public health, or the conservation of grant funds.

[FR Doc. 90-21283 Filed 9-11-90; 8:45 am]
BILLING CODE 4160-15-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-518; RM-6964]

Radio Broadcasting Services; Rutland, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Edward G. and Carol K. Pickett, substitutes Channel 233C3 for Channel 233A at Rutland, Vermont, and modifies the license for Station WKLZ (FM) to

[2] Section 799A of the Public Health Service Act was redesignated as section 704 by Public Law 94-484; section 845 of the Public Health Service Act was redesignated as section 855 by Public Law 94-63.

specify operation on the higher powered channel. *See* 54 FR 49780, December 1, 1989. Channel 233C3 can be allotted to Rutland in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.2 kilometers (11.9 miles) north to avoid a short-spacing to Station WMXR, Channel 230A, Woodstock, Vermont, WNYV, Channel 231A, Whitehall, New York, WHGC, Channel 232A, Bennington, Vermont, WZOU, Channel 233B, Boston, Massachusetts, WRAV, Channel 233A, Ravena, NY, the construction permit on Channel 234A at Lake Luzerne, New York, and pending applications for Channel 287C2 at Killinton, Vermont. The coordinates for Channel 233C3 at Rutland are North Latitude 43–46–42 and West Longitude 72–55–49. Canadian concurrence has been received. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 22, 1990.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–518, adopted August 21, 1990, and released September 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended, under Vermont, by removing Channel 233A and adding Channel 233C3 at Rutland.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–21356 Filed 9–11–90; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 55, No. 177
Wednesday, September 12, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AAL-7]

Proposed Amendment to Anchorage, King Salmon, Point Barrow, Kotzebue, and Nome Transition Areas; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise and extend the transition areas for the following locations in the State of Alaska: Anchorage, King Salmon, Point Barrow, Kotzebue, and Nome. With the addition of several new radar sites in the State of Alaska, the Anchorage Air Route Traffic Control Center (ARTCC) proposes to provide additional controlled airspace for the vectoring of arriving and departing instrument flight rules (IFR) aircraft. This action would increase safety and reduce controller workload.

DATES: Comments must be received on or before October 22, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AAL-500, Docket No. 90-AAL-7, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513-7587.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-AAL-7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish additional controlled airspace around major terminal and off-airway areas in the western part of Alaska. The ability to provide radar separation service over much of the Anchorage ARTCC's airspace is limited by the lack of controlled airspace. The existing transition areas in the western part of the airspace contains only the IFR non-radar routes and departure paths. The FAA increased the number of radar sites in Achorage ARTCC's airspace from 7 to 15 sites. The additional radar sites and controlled airspace improve radar service and efficiency in western Alaska by using off-airway areas for radar services. This action would enhance the safety of aircraft conducting flight under IFR. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Operations Service, FAA, in areas outside domestic airspace of the United States is governed by

Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promote the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil aircraft operations on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

Anchorage, AK [Revised]

That airspace extending upward from 700 feet above the surface within an 18-mile radius of the Anchorage International Airport (lat. 61°10'29"N., long 149°58'38"W.); that airspace extending upward from 1,200 feet above the surface within an 85-mile radius of the Anchorage VOR (lat. 61°09'05"N., long. 150°12'16"W.), and within a 142-mile radius of the Anchorage VOR extending clockwise from the 185° radial to the 278° radial, excluding the Homer, AK, and King Salmon, AK, Transition Areas; that airspace extending above 8,000 feet MSL within a 172-mile radius of the Anchorage VOR extending from the 090° radial clockwise to the 185° radial, excluding the portions within Federal airways, the Middleton Island, AK; Johnstone Point, AK; Gordova, AK; and the Valdez, AK, Transition Areas; and that airspace extending above 14,500 feet MSL within a 172-mile radius of the Anchorage VOR extending from the 185° radial clockwise to the 090° radial, excluding portions within the Continental Control Area, Federal airways, and the King Salmon, AK, Transition Area.

King Salmon, AK [Revised]

That airspace extending upward from 700 feet above the surface within an 85-mile radius of the King Salmon, AK, Airport (lat. 58°40'39"N., long. 156°38'49"W.); that airspace extending upward from 1,200 feet above the surface within the area bounded by a line beginning at lat. 58°00'00"N., long. 156°40'00"W.; to lat 58°30'00"N., long. 160°45'00"W.; to lat. 59°40'00"N., long. 160°25'00"W.; to lat. 60°27'00"N., long. 153°55'00"W.; to lat. 59°15'00"N., long 152°35'00"W.; to lat. 58°06'00"N., long 156°00'00"W., to lat. 58°00'00"N., long. 156°25'00"W.; to point of beginning, excluding the Dillingham, AK; Togiak, AK; and Iliamna, AK Transition Areas; and that airspace extending upward from 14,500 feet MSL within a 172-mile radius of the King Salmon VORTAC (lat. 58°43'31"N., long 156°45'00"W.), excluding the portions within the Continental Control Area, Federal airways, Control 1234, and the Norton Sound, Ak, Additional Control Area.

Point Barrow, AK [Revised]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Barrow VORTAC (lat. 71°16'26"N., long. 156°47'05"W.), extending clockwise from the 101° radial to the 215° radial; and that airspace extending upward from 1,200 feet above the surface within a 32-mile radius of the Barrow VORTAC extending clockwise from the 240° radial to the 101° radial, within an 88-mile radius of the Barrow VORTAC extending clockwise from the 101° radial to the 240° radial, excluding portions within the Federal airways.

Kotzebue, AK [Revised]

That airspace extending upward from 700 feet above the surface within a 19-mile radius of the Kotzebue VOR (lat. 66°53'11"N., long 162°32'14"W.); that airspace extending upward from 1,200 feet above the surface within a 46-mile radius of the Kotzebue VOR, within 46 miles each side of the Kotzebue VOR 103° radial extending from the 46-mile radius to a point 81 miles east of the Kotzebue VOR; and that airspace extending upward from 7,500 feet MSL within 8.5 miles of the Kotzebue VOR 103° radial extending from a point 81 miles east of the Kotzebue VOR to 111 miles southeast of the Kotzebue VOR, excluding the portions within the Selawik, AK, Transition Area and Federal airways.

Nome, AK [Revised]

That airspace extending upward from 700 feet above the surface within a 26-mile radius of the Nome VORTAC (lat. 64°29'09"N., long 165°15'02"W.), extending clockwise from the 277° radial to the 313° radial, and within a 12-mile radius of the Nome VORTAC, extending clockwise from the 313° radial to the 134° radial; and that airspace extending upward from 1,200 feet above the surface within 46 miles of the Nome VORTAC, and within 46 miles each side of the Nome VORTAC 092° radial extending from the 46-mile radius to 98 miles east of the VORTAC, excluding the portions within the Moses Point, AK, Transition Area and Federal airways.

Issued in Washington, DC, on September 5, 1990.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90-21368 Filed 9-11-90; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 228

Tire Advertising and Labeling Guides

AGENCY: Federal Trade Commission.

ACTION: Proposed amendment of the tire advertising and labeling guides.

SUMMARY: The Federal Trade Commission announces that it is seeking comment on a proposed amendment to § 228.9 of the guides. The proposed amendment would delete the third sentence of that section, which requires sellers to designate retreaded tires as "retreads" or "retreaded." With the deletion, sellers would have fewer restrictions on how to advertise their tires, so long as the advertisements clearly and conspicuously disclose that the retreaded tires are not new.

DATES: Written comments must be received on or before November 13, 1990.

ADDRESSES: Written comments should be submitted to Elaine D. Kolish, Assistant Director, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Elaine D. Kolish, Assistant Director,

Division of Enforcement, Federal Trade Commission, Washington, DC 20580. (202–326–3042).

SUPPLEMENTARY INFORMATION: The American Retreaders' Association, Inc. (ARA) and the Tread Rubber Manufacturers Group (TRMG) jointly petitioned the Commission on August 18, 1988 to revise § 228.9 (Guide 9) of the Tire Advertising and Labeling Guides (Tire Guides), 16 CFR part 228.[1] Specifically, the petition sought revision of Guide 9 to permit use of the term "remanufactured" when describing retreaded tires. ARA and TRMG contend that the proposed change is necessary "to more accurately reflect the positive changes which have taken place in this industry." The petitioners further contended that the term "retreaded" is too narrow a term to describe one of many processes used in the industry. Under the petitioners' proposal, the term "remanufactured" could be used generically to describe various processes such as top capping, sholder-to-shoulder retreading or bead-to-bead retreading.

The National Tire Dealers & Retreaders Association, Inc. (NTDRA) advised the Commission that it believes the term "remanufactured" may be confusing and possibly misleading to consumers. It therefore opposed modification of Guide 9. NTDRA also stated that no change should be made without a public proceeding. It also stated that if Guide 9 were to be reviewed publicly, all parts of the Tire Guides should be reviewed.

The Commission has considered the petitioners request and the letter NTDRA submitted and determined to solicit comment on a proposed amendment to Guide 9. Specifically, the Commission seeks comment on whether the last sentence of Guide 9 should be deleted. The Commission is proposing this change because the intent of Guide 9 is to prevent sellers from misleading consumers into believing that the seller is offering new tires when the tires are in fact used. The Commission believes that the use of terms other than "retread" or "retreaded" to satisfy the intent of Guide 9 is not necessarily deceptive.

Under the petitioners' proposal, retreads could be designated either "retreaded" or "remanufactured." Another alternative would be to expand the list of "mandatory" terminology in the last sentence of Guide 9, to include, for example, not only "remanufactured" but also such terms as "recapped"or "remolded." However, the Commission believes that it would be preferable to delete the last sentence of Guide 9 because this amendment allows sellers the flexibility to use any terms that "clearly and conspicuously disclose that [their tires] are not new products."

Because guides are merely interpretative statements, the Commission is not required to give the public an opportunity to participate in proceedings to amend them. However, the Commission's policy, as expressed in the Commission's Operating Manual, is generally to obtain public comment on the promulgation of an industry guide.[2] Accordingly, consistent with this policy, the Commission solicits written comment from interested parties on whether to delete the last sentence of Guide 9. Comment should be limited to that issue.

List of Subjects in 16 CFR Part 228

Advertising, Motor vehicles, Tires, Trade practices.

PART 228—[AMENDED]

The authority citation for part 228 continues to read as follows:

Authority: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90–21378 Filed 9–11–90; 8:45 am]

BILLING CODE 6750–01–M

[1] Section 228.9 states: Advertisements of used or retreaded products should clearly and conspicuously disclose that same are not new products. Unexplained terms, such as "New Tread," "NuTread" and "Snow Tread" as descriptive of such tires do not constitute adequate disclosure that tires so described are not new. All such tires should be clearly designated as "retreads" or "retreaded." [Guide 9]

[2] See chapter 8.3.6.4 of the FTC Operating Manual.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

RIN 0960–AC45

[Regulations No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Extension of Social Security Coverage to Certain Workers; Medicare Only Coverage of Certain State and Local Government Employees; Medicare Qualified Government Employment

AGENCY: Social Security Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to review several rules in Subpart K—Employment, Wages, Self-Employment, and Self-Employment income—of part 404 of title 20 of the Code of Federal Regulations. These revisions reflect statutory enactments that—

1. Extend Social Security coverage to certain work situations;
2. Determine the taxable year in which income paid a director of a corporation is considered received for Social Security purposes; and
3. Extend Medicare coverage to certain employees of States and their local governments.

We are also proposing to amend certain regulatory provisions of part 404, Subpart E—Deductions; Reductions; and Nonpayment of Benefits—to reflect the manner in which these statutory enactments affect the annual earnings test.

DATES: To be sure your comments are considered we must receive them no later than November 13, 1990.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: L.V Dudar, Legal Assistant, Office of Regulations, Social Security Administration 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1795.

SUPPLEMENTARY INFORMATION:

Extension of Social Security Coverage

The Omnibus Budget Reconciliation Act of 1987 (OBRA)—Public Law 100–203—contains several provisions extending and revising Social Security coverage to certain workers. An OBRA provision concerning coverage of agricultural work was subsequently amended by a provision of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA)—Public Law 100–647. The amendments to the rules to reflect these statutory provisions are as follows:

Section 404.1015 Family Services

Based on section 210(a)(3)(A) of Social Security Act (the Act), as amended by section 9005 of OBRA, we are proposing to amend § 404.1015 to make the

coverage exclusion that is now applicable to a child under age 21 who is an employee of his or her parent(s) apply when the child is under are 18. However, this section, as amended, provides that we continue to exclude from coverage the nonbusiness work or domestic service a child may perform as an employee of his or her parent(s) if the child is age 18 through 20. At age 21, any work a child performs for his or her parent(s) is covered.

Based on section 210(a)(3) of the Act, as amended by section 9004 of OBRA, we are proposing to delete a paragraph of § 404.1015 and to amend two other paragraphs of this section pertaining to spousal employment. These changes would provide that service performed by a person working for his or her spouse is no longer excluded from coverage unless the work is nonbusiness or domestic work.

Section 404.1019 Work as a Member of a Uniformed Service of the United States

Based on section 210 (l)(1) of the Act, as amended by section 9001 of OBRA, we are proposing to amend paragraph (a) of this section to show that we will not provide Social Security coverage for inactive duty training performed by a member of a uniformed service.

Section 404.1055 Payments for Agricultural Labor

We propose to amend this section to reflect the change in coverage of agricultural labor required by the amendments of section 209(h) of the Act, by section 9002 of OBRA, and by section 8017 of TAMRA. This statutory change provides that all cash wages paid to an employee for agricultural labor are covered wages if the employer's total expenditures for agricultural labor in the calendar year equal or exceed $2,500 unless the employee is paid cash payments of less than $150 and (1) is paid on a piece rate basis as a hand harvester in a piece rate operation, (2) commutes to the farm daily, and (3) was employed less than 13 weeks in agriculture in the proceding year. The earnings are covered, as under prior law, if the employer pays the employee $150 or more in a year. The provision which covers an agricultural employee who works at least 20 days for an employer for cash pay computed on a time basis (the 20-day test) has been eliminated as a result of section 9002 of OBRA with respect to remuneration paid for agricultural labor after December 31, 1987.

Section 404.1058 Special Situations

This section will be amended to reflect one statutory provision. We will include pay to members of a uniformed service while on inactive duty for training as wages to reflect section 9001 of OBRA. See also the amendment to § 404.1019—Work as a member of a uniformed service of the United—discussed above.

Section 404.1097 Corporate directors

Based on section 211(a) of the Act, as amended by section 9022 of OBRA, we propose to add a new section concerning income earned as a corporate director. Income paid to directors of corporations is considered received for self-employment coverage purposes in the year the services are performed regardless of when the income is actually paid to or received by the directors unless the income was actually paid and received in an earlier year.

Extension of Medicare Coverage

We propose to add a paragraph (b) to § 404.1018b—Medicare qualified government employment—to reflect the enactment of sections 9129 and 13205 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA of 1985—Pub. L. 99–272), which amends section 21(p) of the Act to provide for Medicare coverage, subject to certain exceptions, of employees of State and local political subdivisions. This Medicare protection applies mostly to State and local government employees hired after March 31, 1986, who are not covered under title II of the Social Security Act because the State did not enter into a coverage agreement with the Secretary of Health and Human Services under section 218 of the Social Security Act providing for such coverage. The employees who come under the scope of the COBRA of 1985 legislation are thus covered under Medicare but not Social Security. The amended § 404.10118b also lists the categories of State and local government employees described under section 210(p)(2) of the Act as added by section 13205(b)(1) of COBRA of 1985. The amended § 404.1018b also reflects the amendments to sections 210(p)(2) of the Act by the enactment of section 1895(b)(18) of the Tax Reform Act of 1986 (Pub. L. 99–514), which excludes from mandatory Medicare coverage, election officials or election workers whose remuneration for such service is less than $100 in a calendar year. We also propose to amend § 404.1020—Work for States and their political subdivisions and instrumentalities and § 404.1021—Work for the District of Columbia—to include references to the § 404.1018b(b) provisions.

Medicare coverage had previously been extended to Federal employment as the result of the enactment of section 278 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248). These Medicare coverage provisions have been implemented by a separate regulation published on October 4, 1988 (53 FR 38943).

Annual Earnings Test Changes—Subpart E of Part 404

We propose to amend paragraph (c)(3) of § 404.429 to refer to the proposed amended § 404.1055 Payments for agricultural labor (see above). The amended § 404.1055 reflects changes in agricultural labor coverage for remuneration paid after December 31, 1987, as required by the enactment of section 9002 of OBRA as later amended by section 8017 of TAMRA. Also, we are deleting the table of annual wage limitations from paragraph (c)(1) of § 404.429 since this table duplicates the table under § 404.1047. Paragraph (c)(1) of § 404.429 as amended will refer to the table under § 404.1047.

Regulatory Procedures

Executive Order 12291

These proposed regulations have been reviewed under Executive Order 12291 to determine whether a major rule is involved. Two provisions of these proposed regulations reflect statutory provisions with a significant cost impact on the public. The two provisions and their estimated costs are the following:

1. Social Security Coverage of persons performing inactive duty training—estimated yearly costs starting from $390 million and rising to $474 million over a 5-year period.

2. Medicare coverage of State and local employees—estimated yearly costs starting from $753 million and rising to $1,696 million over a 5-year period.

The remaining provisions will have a negligible cost impact on the public.

The statutory provision providing for Social Security coverage of inactive duty training income has been actively enforced by the Internal Revenue Service (IRS) since it went into effect after December 31, 1986. The statutory provision providing Medicare coverage to State and local employees has been actively enforced by IRS since it went into effect after March 31, 1986. IRS issued Revenue Rulings Nos. 86–88 and 86–36 and a Revenue Notice No. 767 (issued July 1986) for purposes of implementing the Medicare coverage

statutory provision. Since enforcement of these statutory provisions is the responsibility of IRS and has already been undertaken independent of these regulations, these regulations are not the direct cause of the cost impact on the public. Consequently, the Secretary has determined that these proposed regulation are not major rules.

Paperwork Reduction Act

These proposed regulations impose no reporting/recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

The Secretary certifies that these proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. Small businesses should not be significantly affected by any of the statutory provisions reflected in these regulations and the tax collected should be insignificant. The statutory provision extending Medicare to State and local government employees may cause some small governmental entities, whose employees had not previously been covered by Medicare, to have to pay the Medicare tax. However, this regulation simply reflects a statutory provision already in effect and implemented by IRS since March 31, 1986. Consequently, all the regulations will have a minimal overall economic impact. Therefore, regulatory flexibility analysis, as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs: No. 13.802 Social Security Disability Insurance; No. 13.803 Social Security—Retirement Insurance; No. 13.805 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-age, survivors, and disability insurance.

Dated: December 26, 1989.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: July 30, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 404 of chapter III, title 20 of the Code of Federal Regulations is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950)

1. The authority citation for subpart E continues to read as follows:

Authority: Secs. 202, 203, 204 (a) and (e) 205(a), 222(b), 223(e), 224, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404 (a) and (e), 405(a), 422(b), 423(e), 424, 427, and 1302.

2. Section 404.429 is amended by revising paragraphs (c)(1) and (c)(3) to read as follows:

§ 404.429 Earnings; defined.

* * * * *

(c) * * *

(1) Remuneration in excess of the amounts in the annual wage limitation table in § 404.1047;

* * * * *

(3) Payments for agriculture labor excluded under § 404.1055.

* * * * *

3. The authority citation for subpart K is revised to read as follows:

Authority: Secs. 205(a), 209, 210, 211, 229(a), 230, 231, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 409, 410, 411, 429(a) 430, 431, and 1302; Secs. 1151(d)(2)(C), 1704, and 1882 of Pub. L. 99–514; 100 Stat. 2505, 2779, and 2914; Secs. 9001, 9002, 9004, 9005, and 9022 of Pub. L. 100–203; 101 Stat. 1330; Sec. 8017 of Pub. L. 100–647; 102 Stat 3793.

4. Section 404.1015 is amended by removing present paragraph (a)(1), redesignating the present paragraph (a)(2) as paragraph (a)(1) and revising this redesignated paragraph, adding a new paragraph (a)(2), revising paragraph (a)(3), and revising the paragraph (a)(4) introductory text to read as follows:

§ 404.1015 Family services.

(a) * * *

(1) You work while under age 18 in the employ of your parent;

(2) You do nonbusiness work (see § 404.1059(a)(3) for an explanation of nonbusiness work) or perform domestic service (as described in § 404.1058(b)) as an employee of your parent while under age 21;

(3) You do nonbusiness work as an employee of your son, daughter, or spouse; or

(4) You perform domestic service in your daughter's, son's, or spouse's private home as an employee of that daughter, son, or spouse unless—* * *

* * * * *

5. Section 404.1018b is revised to read as follows:

§ 404.1018b Medicare qualified government employment.

The work of a Federal, State, or local government employee not otherwise subject to Social Security coverage may constitute Medicare qualified government employment. Medicare qualified government employment means any service which in all ways meets the definition of "employment" for title II purposes of the Social Security Act, except for the fact that the service was performed by a Federal, State or local government employee. This employment is used solely in determining eligibility for protection under Part A (Hospital insurance) and for coverage under the Medicare program for end-stage renal disease.

(a) *Federal employment.* If, beginning with remuneration paid after 1982, your service as a Federal employee is not otherwise covered employment under the Social Security Act, it is Medicare qualified government employment unless excluded under § 404.1018(c).

(b) *State and local government employment.* If, beginning with service performed after March 31, 1986, your service as an employee of a State or political subdivision (as defined in § 404.1202(b)), Guam, American Samoa, The District of Columbia, or the Northern Mariana Islands is not otherwise covered employment under the Social Security Act (note §§ 404.1020 through 404.1022), it is still Medicare qualified government employment except as provided in paragraphs (b) (1) and (2) of this section.

(1) An individual's service shall not be treated as employment if performed—

(i) By an individual employed by a State or political subdivision for the purpose of relieving that individual from employment;

(ii) In a hospital, home, or other institution by a patient or inmate as an employee of a State, political subdivision, or of the District of Columbia;

(iii) By an individual, as an employee of a State, political subdivision or District of Columbia serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency;

(iv) By an individual as an employee included under 5 U.S.C. 5351(2) (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia government), other than as a medical or dental intern or a medical or dental resident in training; or

(v) By an election official or election worker paid less than $100 in a calendar year for such service.

(2) An individual's service performed for an employer shall not be treated as employment if—

(i) The service would otherwise be excluded from coverage under section 210 of the Social Security Act; or

(ii) The service is performed by an individual who—

(A) Was performing substantial and regular service for remuneration for that employer before April 1, 1986;

(B) Was a bona fide employee of that employer on March 31, 1986;

(C) Did not enter into the employment relationship with that employer for purposes of meeting the requirements of paragraphs (b)(2)(ii) (A) and (B) of this section; and

(iii) Did not have the employment relationship terminated with that employer after March 31, 1986.

6. Section 404.1019 is amended by revising paragraph (a) to read as follows:

§ 404.1019 Work as a member of a uniformed service of the United States.

(a) Your work as a member of a uniformed service of the United States is covered under Social Security (unless creditable under the Railroad Retirement Act), if—

(1) Beginning January 1, 1957, you perform active duty service but not including service performed while on leave without pay; and

(2) Beginning January 1, 1988, you perform service on inactive duty training.

* * * * *

7. Section 404.1020 is amended by redesignating present paragraph (b) as paragraph (c) and adding new paragraph (b) to read as follows:

§ 404.1020 Work for States and their political subdivisions and instrumentalities.

* * * * *

(b) *Medicare qualified government employment.* Notwithstanding the provisions of paragraph (a) of this section, your work may be covered as Medicare qualified government employment (see § 404.1018b(b) of this subpart).

* * * * *

8. Section 404.1021 is amended by adding paragraph (c) to read as follows:

§ 404.1021 Work for the District of Columbia.

* * * * *

(c) *Medicare qualified government employment.* If your work is not covered under Social Security, it may be covered as Medicare qualified government employment (see § 404.1018b(b) of this subpart).

9. Section § 404.1055 is amended by revising paragraphs (a), (b), and (c)(1) to read as follows:

§ 404.1055 Payments for agricultural labor.

(a) *The $150 cash-pay and $2,500 expenditures tests.* Your cash payments in a year from an employer for agricultural labor (see § 404.1057) are wages if—

(1) Your employer paid you $150 or more, or

(2) Your employer's total expenditures for agricultural labor are $2,500 or more, unless—

(i) You are employed as a hand harvest laborer and are paid on a piece rate basis in an operation which has been, and is customarily and generally has been recognized as having been, paid on a piece rate basis in the region of employment;

(ii) You commute daily from your permanent residence to the farm on which you are so employed; and

(iii) You were employed in agriculture less than 13 weeks during the previous calendar year.

The $150 cash-pay test applies both prior to or on or after January 1, 1988. The $2500 expenditure test can apply only to payments made on or after January 1, 1988. Noncash payments for agriculture labor are not wages under either test.

Example: In 1988 A performs agricultural labor for X for cash pay of $144 in the year. X's total agricultural labor expenditures for 1988 are $2,450. Neither the $150 cash-pay test nor the $2,500 expenditures test is met. Therefore, X's payments to A are not wages.

(b) *When cash-pay is creditable as wages.* (1) If you receive cash pay from an employer both for services which are agricultural labor and for services which are not agricultural labor, we count only the amounts paid for agricultural labor in determining whether cash payments equal or exceed $150 or, if the amounts paid are less than $150, we count only those amounts paid for agricultural labor in determining the actual earnings to credit to the individual if the $2500 total expenditure test is met (for periods beginning on or after January 1, 1988) or the 20-day work test described in paragraph (c) of this section is met (for periods of time prior to 1988).

Example: Employer X operates a store and also operates a farm. Employee A, who regularly works in the store, works on X's farm when additional help is required for the farm activities. In calendar year 1988, X pays A $140 cash for agricultural labor performed in that year, and $2,260 for work in connection with the operation of the store. Additionally, X's total expenditures for agricultural labor in 1988 were $2,010. Since the cash payments by X to A in the calendar year 1988 for agricultural labor are less than $150, and total agricultural labor expenditures were under $2,500, the $140 paid by X to A for agricultural labor is not wages. The $2,260 paid for work in the store is wages.

(2) The amount of cash pay for agricultural labor that is creditable to an individual is based on cash paid in a calendar year rather than on amounts earned during a calendar year.

(3) If you receive cash pay for agricultural labor in any one calendar year from more than one employer, we apply the $150 cash-pay test and $2,500 total expeditures test to each employer.

(c) *Application of 20-day test prior to 1988.* (1) For periods of time prior to 1988, we apply either the $150 a year cash pay test or the 20-day test. Cash payments are wages under the 20-day test if you perform agricultural labor for which cash pay is computed on a time basis on 20 or more days during a calendar year. For purposes of the 20-day test, the amount of the cash pay is immaterial, and it is immaterial whether you also receive payments other than cash or payments that are not computed on a time basis. If cash paid to you for agricultural labor is computed on a time basis, the payments are not wages unless they are paid in a calendar year in which either the 20-day test or the $150 cash-pay test is met.

* * * * *

10. Section 404.1058 is amended by revising paragraph (c)(1), adding introductory text to paragraph (c)(2), adding paragraph (c)(4) to read as follows:

§ 404.1058 Special situations.

* * * * *

(c) * * *

(1) *The standard.* We include as the wages of a member of the uniformed services—

(i) Basic pay, as explained in paragraph (c)(3) of this section, for performing the services described in paragraph (a)(1) of § 404.1019 of this subpart; or

(ii) Compensation, as explained in paragraph (c)(4) of this section, for performing the services described in paragraph (a)(2) of § 404.1019 of this subpart.

(2) *Wages deemed paid.* These following provisions apply to members of the uniformed services who perform services as described in paragraph (a)(1) of § 404.1019 of this subpart; * * *

* * * * *

(4) *Compensation.* "Compensation" refers to the remuneration received for services as a member of a uniformed service, based on regulations issued by the Secretary concerned (as defined in 37 U.S.C. 101(5)) under 37 U.S.C. 206(a), where such member is not entitled to the basic pay (as defined by paragraph (3) of this section).

* * * * *

11. Section 404.1097 is added to read as follows:

§ 404.1097 Corporate directors.

Any income of an individual resulting from or attributable to services performed as a director of a corporation during any taxable year shall be considered to have been received by the individual in the taxable year the services were performed, regardless of when the income is actually paid to or received by the individual (unless paid and received prior to the year the services were performed).

[FR Doc. 90-21266 Filed 9-11-90; 8:45 am]
BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 256

RIN 1076-AC22

Housing Improvement Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is publishing a Proposed rule to revise the regulations of the Housing Improvement Program (HIP) in accordance with the requirements of HIP as a construction program for the needy. These proposed regulations add standard formulas to be applied in the selection and development of priority lists of eligible applicants.

DATES: Comments must be received on or before November 13, 1990.

ADDRESSES: Written comments should be directed to the Division of Housing Assistance, Bureau of Indian Affairs, Mail Stop 4640-MIB, 1849 "C" Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: A. Ronald Thurman, Acting Chief, Division of Housing Assistance, Bureau of Indian Affairs, Mailstop 4640-MIB, 1849 "C" Street, NW., Washington, DC 20240, Telephone (202) 208-5427 (FTS: 268-5427).

SUPPLEMENTARY INFORMATION: The authority to issue Rules and Regulations is vested in the Secretary of the Interior by (25 U.S.C. 2 and 9). This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Congressional direction contained in the FY 1984 Department of the Interior and Related Agencies Appropriation Conference Report directed the Bureau to develop a program which is more cost effective and better meets identified housing needs.

In response to the above directive, the Bureau developed a new system to achieve the results intended. The new system was developed by a team of Bureau and tribal personnel over an extended period of time. The system was presented and discussed with tribal officials across the country. Tribal input, comments and recommendations were considered for incorporation into the proposed system.

Prior to the redirect many program administrators were not following the requirements to bring a house to a standard level when doing repairs. This resulted in a large number of homes being technically ineligible for second-time service while still remaining in a substandard condition. This condition is inconsistent with the intent of the program and the intent of the redirect. Therefore, the effective date prohibiting second-time service was changed to coincide with the date Congress proposed for the redirected program to be put in place.

A new distribution system for HIP funds was developed which is based upon a valid and consistent inventory of housing needs and planned program effort that addresses tribal housing needs on a long-range planned basis.

The HIP Selection Criteria were developed as a corrective action to address the weakness identified by the Inspector General and the General Accounting Office in the tribal selection process of eligible applicants for HIP assistance. The Selection Criteria were reviewed and accepted by the Inspector General and the General Accounting Office.

This document was developed as a joint effort by the Division of Housing Assistance Central Office staff, Area Housing Officers, and the National Indian Housing Improvement Association. The coordinating author is A. Ronald Thurman, Housing Program Specialist, Division of Housing Assistance.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding this proposed revision.

The information collection requirements contained in section 256.5 HIP application, Form BIA 6407, have been approved by the Office of Management and budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1076-0084. The information is being collected to obtain a benefit.

Executive Order 12291:

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601).

Since this document does not constitute a major Federal action significantly affecting the quality of the human environment in accordance with the National Environmental Policy Act of 1969, no environmental assessment or impact statements were made.

List of Subjects in 25 CFR Part 256

Grant programs—home improvement; Indians.

For the reasons set forth in the preamble, the Bureau of Indian Affairs proposes to amend title 25, chapter I, subchapter K—Housing, by revising part 256, Housing Improvement Program of the Code of Federal Regulations as follows:

PART 256—HOUSING IMPROVEMENT PROGRAM

Sec.

Authority: 42 Stat. 208 (25 U.S.C. 13).

§ 256.1 Purpose.

The purpose of this part is to prescribe the terms and conditions under which assistance is given to Indians under the Housing Improvement Program (HIP).

§ 256.2 Definitions.

As used in this part 256:

Area Director means the Officer in charge of one of the Bureau of Indian Affairs' Area Offices, or his/her authorized delegate.

Assistant Secretary means the Assistant Secretary—Indian Affairs, or his/her authorized representative.

Dilapidated means a state of disrepair.

Family means one or more persons maintaining a household.

Handicapped means legally blind; legally deaf; lack of or inability to use one or more limbs; chair or bed bound; inability to walk without crutches or walker; mental disability in an adult of a severity that requires a companion to aid in basic needs, such as dressing, preparing food, etc., or severe heart and/or respiratory problems preventing even minor exertion, such as housework.

Indian means any person who is a member of any of those tribes listed in the **Federal Register** pursuant to 25 CFR part 83 as recognized by and receiving services from the Bureau of Indian Affairs.

Non-member Indian means any person who is a member of a federally recognized tribe living in another tribe's approved service area.

Ownership means having fee title, trust title, leasehold interest, use permit, indefinite assignment or other exclusive possessory interest. In the case of Alaska, the term also includes one who the Superintendent determines has a reasonable prospect of becoming an owner, such as in accordance with the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688).

Secretary means the Secretary of the Interior.

Service area means reservations, allotments, restricted lands, and Indian owned fee lands within a geographical area, designated by a tribe and approved by the Area Director, to which equitable services can be delivered.

Standard housing means a dwelling in a condition which is decent, safe and sanitary so that it meets the following minimums:

(a) General construction conforms to applicable tribal, county, state or national codes and to appropriate building standards for the region.

(b) The heating system has the capacity to maintain a minimum temperature of 70 degrees in the dwelling during the coldest weather in the area. It must be safe to operate and maintain and deliver a uniform distribution of heat.

(c) The plumbing system includes a properly installed system of piping and fixtures.

(d) The electrical system includes wiring and equipment properly installed to safely supply electrical energy for adequate lighting and for the operation of appliances.

(e) Family size per dwelling does not exceed these limits:

(1) Two bedroom dwelling: Up to four persons (the first bedroom must have at least 120 sq. ft. of floor space and the second bedroom must have a minimum of 100 sq. ft. of floor space).

(2) Three bedroom dwelling: Up to seven persons (the first bedroom must have at least 120 sq. ft. of floor space and the second and third bedroom must have a minimum of 100 sq. ft. of floor space each).

(3) Four bedroom dwelling: Adequate for all but the very largest families (the first bedroom must have at least 120 sq. ft. of floor space and the remaining bedrooms must have a minimum of 100 sq. ft. of floor space each).

(f) Two exceptions to standard housing will be permitted:

(1) Where one or more of the utilities are not available and there is no prospect of the utilities becoming available; and

(2) In areas of severe climate, house size may be reduced to meet applicable building standards of the region.

(g) The house site must be chosen so that access to utilities is most economical, ingress and egress adequate, aesthetics are considered, and proximity to school bus routes is taken into account.

Superintendent means the Officer in charge of the Agency or other local office of the Bureau of Indian Affairs.

Tribe means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony, or Community, including any Alaska Native Village which is federally recognized as eligible by the United States Government for the special programs and services provided by the Secretary to Indian tribes because of their status as Indians.

§ 256.3 Policy.

(a) The Bureau of Indian Affairs' housing policy is consistent with the specific objectives of the national housing policy which declares that every American family should have the opportunity for a decent home and suitable living environment. To the maximum extent possible, tribes will be involved in the administration of the program.

(b) Every Indian, as defined in § 256.2 and eligible pursuant to § 256.6, is entitled to participate in this program irrespective of tribal affiliation, provided equitable services can be delivered to the geographic area within which his/her domicile is located.

(c) The general distribution of HIP funds among tribes is based on a consistent, valid and certified inventory of tribal housing needs. Every effort will be made to use HIP funds in conjunction with other programs so that the result will be a greater amount of housing improved than would otherwise be possible with the HIP funds alone. In cases where training programs are used in conjunction with the HIP, funds are to be limited to the purchase of materials and providing inspection and skilled labor otherwise unavailable.

(d) Tribal allocation levels are determined on the basis of the HIP's responsibility of the total housing needs derived from the tribal inventories of need. The emphasis of the HIP will be on repair and renovation of existing housing while other federally-assisted programs are responsible for the bulk of the new house building effort. As such, the BIA's funding calculations are based on 90% of the repair need and up to 10% of the new construction need indicated by tribal housing inventories. The HIP may provide a grant for the financing of the construction of a limited amount of new standard housing when it is established that the applicant has been denied housing assistance from sources other than the HIP. Thus, each fiscal year, the BIA will allocate funds appropriated for HIP in proportion to the identified housing needs.

§ 256.4 Program categories.

The HIP will provide assistance in the following categories:

(a) *Repairs that will remain non-standard.* Under this category:

(1) Financial assistance will be granted to finance repairs and additions to existing substandard housing so that it is safe, more sanitary and livable until such time as standard housing is available.

(2) The standard to be applied in deciding whether to provide assistance is improvement in the condition of the house, i.e., improved livability or reduced health and safety hazards even though it may be obvious that such an undertaking will not improve the house to the extent that it will meet the standard of decent, safe and sanitary. Examples of the improvement that may be undertaken are: Weathertightening, re-roofing, electrical wiring, chimney repairs,, foundations, heating, sanitary facilities, painting, additional living and/or sleeping space, and kitchen or bathroom additions in conjunction with Indian Health Service projects.

(3) The cumulative total expenditure of the HIP funds shall not exceed $2,500 for any one dwelling.

(4) The funds shall be granted and no restrictions on the use of the home may be imposed.

(b) *Repairs to housing that will become standard.* Under this category:

(1) Financial assistance will be granted to finance repairs, renovation and/or enlargement of existing structurally sound, but deteriorated, dwelling which can economically be placed in a standard condition.

(2) Upon completion of work, the dwelling shall fit the definition of standard housing as defined in § 256.2.

(3) The total expenditure of the HIP Program Funds shall not exceed $20,000 of any one dwelling. (In the case of Alaska, reasonable, substantiated freight costs in accordance with Federal Property Management Regulation (FPMR) 101–40, not to exceed 100% of the material cost, may be added).

(4) Undertakings under this category are for applicants who are living in their own home.

(5) The applicant must sign a written agreement that if he/she sells the house within five years following the date of completion of the repairs, the grant is voided and the grantee will repay the full amount of the grant to the Bureau of Indian Affairs at time of settlement.

(c) *Down payments.* Under this category.

(1) The HIP provides grants in order to make the applicant eligible to receive housing loans from tribal, Federal or other sources of credit. The applicant must establish that he/she has an inadequate income or limited financial resources to meet the full cost of the loan. Grants are only for standard housing.

(2) The grant shall not exceed the amount necessary to secure the loan plus the closing costs or ten percent (10%) of the purchase of the house plus the closing cost or $5,000 whichever is less. (In the case of Alaska, the grant amount shall not exceed $6,000).

(3) The method of advancing the grant must ensure that the funds are used for the purpose intended. The applicant must sign a written agreement that if he/she sells the house within five years following the date of purchase, the grant is voided and the amount of the grant will be fully repaid by the grantee to the Bureau of Indian Affairs at time of settlement.

(d) *New housing.* Under this category:

(1) The HIP may provide a grant for the financing of the construction of a limited amount of new standard housing when it is established that the applicant has been denied housing assistance from sources other than the HIP.

(2) The housing provided under this category must meet the housing standards of this Part. Mobile units with an intregal frame are specifically excluded.

(3) The total expenditure of HIP funds shall not exceed $45,000 for a dwelling and equipment. (In the case of Alaska, the total expenditure of funds shall not exceed $55,000, plus reasonable, substantiated freight costs in accordance with FPMR 101–40, not to exceed 100% of the materials cost). The occupant will be responsible for all maintenance of the completed dwelling and all utility fees, deposits or costs required for service.

(4) The applicant must have ownership of the land on which the house is located. In the case of a leasehold interest, it must be for not less than 25 years. The applicant must sign a written agreement that if he/she sells the house within the first ten years from the date of ownership, the grant is voided and the full amount of the HIP grant will be repaid by the grantee to the Bureau of Indian Affairs at time of settlement. Subsequent to the first ten years, if the grantee sells the house, he/she may retain 10% of the original grant amount per year beginning in the eleventh year, with the remaining amount to be repaid to the Bureau of Indian Affairs. If the sale occurs twenty years or more after the date of ownership, no repayment of any part of the grant will be due the Bureau of Indian Affairs.

(5) Notwithstanding the above repayment provision, if an owner of a house on tribal land desires to move, he/she must notify the tribe of this intention so that the tribe may designate another needy individual to assume the owner's interest in the house. Within 60 days of such notice, if the tribe takes no action, the owner may designate someone to assume his/her interest and obligations in the house.

(6) Adequate fire insurance, where determined feasible, must be carried.

§ 256.5 HIP applications.

Individuals wishing to participate in the Housing Improvement Program must fill out BIA Form 6407. Application forms may be obtained from tribes or the nearest Bureau of Indian Affairs Office. Completed applications should be submitted to tribes or the BIA Office, where applicable. Each application for assistance should be approved by the tribe.

§ 256.6 Eligibility.

(a) To establish eligibility for selection to receive a grant under § 256.7, an applicant must show that:

(1) The applicant is an Indian.

(2) The present housing of the applicant is substandard or inadequate in terms of capacity to meet the physical needs of the family.

(3) The applicant has been denied, or is ineligible for, housing assistance from sources other than the HIP.

(4) The economic resources of the applicant are inadequate or factors exist which make the applicant unable to obtain housing from other local, state or Federal sources. Applicants whose annual income exceeds the Department of Health and Human Services Poverty Income Guidelines by 225% or more shall be ineligible for HIP assistance on the basis of need. Determination of eligibility will be made on a case by case basis.

(5) The applicant for assistance under one of the categories in § 256.4 meets the ownership requirements given under that category.

(b) After October 1, 1983, an applicant may only receive assistance once under categories given in paragraphs (b), (c), and (d) of § 256.4.

(c) Department of Housing and Urban Development (HUD) financed houses under the administration of an Indian Housing Authority (IHA) will not be eligible for assistance until the end of the entire project indebtedness to the Federal Government, and only after housing needs identified on the HIP inventory of all eligible Indians have been met.

§ 256.7 HIP selection criteria.

Once the eligibility requirements of § 256.6 are satisfied, development of priority lists of eligible applicants shall be accomplished by a ranking system based on six basic factors of need: Annual Income, Family Size, Overcrowded Living Conditions, Age, Handicap or Disability, and HUD–IHA Financed Housing. Eligible applicants may receive points for any or all of these six factors. Priority will be given relative to the number of points received. Appendix A provides a summary of selection criteria.

(a) *Factor No. 1—Annual Household Income* (Up to 40 Points available).

(1) The eligible applicant's total annual household income and other resources, if any, must be evaluated in order to determine priority in terms of degree of poverty. If an individual is counted as a family member for the purpose of determining Family Size (Factor No. 2), the annual income of that person must be included in the total annual household income on the HIP application. Examples of income which must be included are royalties and one-time income. A specific definition of the type of resources which must be included is set forth in 25 CFR part 20.

(2) In order to determine whether or not the applicant is entitled to points under Factor No. 1, it is necessary to compare the total combined annual household income against the Federal Poverty Income Guidelines which are published annually by the Department of Health and Human Services. The most current issues of the Guidelines published in the Federal Register by

Health and Human Services (HHS) will be used during the selection process. A yardstick for determining applicant income priority is provided based upon 125% of the Poverty Income Guidelines. In addition, even greater point values are available for applicants whose annual income falls substantially (25% or more) below the poverty level. In order to facilitate calculations, a chart of the various income levels is provided to each tribe annually upon publication of new revised Poverty Guidelines by HHS each year.

(b) *Factor No. 2—Family Size* (5 points per dependent child). Priority is given to families with the greatest need in relation to income, family size and ineligibility for other available programs providing housing assistance. Factor No. 2 emphasizes priority for families with dependent children, while Factors 3, 4, and 5 below address other elements of family need. A dependent child for purposes of this subsection is a person meeting the definition of "child" in 25 CFR part 20.

(c) *Factor No. 3—Over-crowded Living Conditions. (Up to 10 points possible).*

(1) The definition of "standard housing" identifies the acceptable limits for family size per dwelling (see § 256.2). In order to earn points under Factor No. 3 the applicant family must exceed the limits for its dwelling established in § 256.2. A family is overcrowded if:

(i) Three or more persons occupy a one-bedroom dwelling.

(ii) Five or more persons occupy a two-bedroom dwelling.

(iii) Eight or more persons occupy a three-bedroom dwelling.

(2) Depending upon the circumstances and the degree of overcrowding, as well as the family structure, the committee reviewing HIP applications can award as few as 1 point or as many as 10 points for the overcrowding factor.

(3) The preceding overcrowded living description is not feasible in Alaska where, because of the unique climatic conditions, a dwelling is frequently not divided into the conventional room arrangement customary in the contiguous 48 states. Recommended guidelines for Alaska only are therefore based upon gross square feet per occupant, ranging from 2 to 10 points for Factor No. 3.

(d) *Factor No. 4—Age.—(1) Elderly couple.* (Up to 21 points per individual available). Points are awarded based upon age, beginning at age 55, with a maximum of 21 points per elderly person available. Appendix B to this part is a schedule, by age, of the number of points to be awarded in this category. If an applicant family has an elderly relative who is a permanent household member, points are added to the application for this person.

(2) *Single, elderly, living alone* (Up to 32 points). Special priority amounting to 150% of the Factor No. 4 standard schedule, as identified in paragraph (d)(1) of this section, is provided ONLY for an elderly individual living alone and applying for a grant for HIP. An elderly widower/widow, age 70, living by him/herself will be allowed 16 points for him/herself plus 50% (8 points) or a total of 24 points. In calculating allowable points using the schedule shown in appendix B, eliminate decimals by rounding to the next higher whole number.

(e) *Factor No. 5—Handicap or disability* (Up to 20 points available per application).

(1) The many and varied degrees and types of disability present a complex ranking situation. A general definition of handicapped is provided as a guide. The selection committee evaluating HIP applications shall determine, the number of points up to the maximum of 20 merited by the applicant (or family member) based upon the degree of disability.

(2) Applicants should provide as much documentation as possible concerning the disabled person's condition. This could include a doctor's certification, Veteran's Administration determination, Social Security determination of degree of disability or similar information which would assist the HIP committee in its point calculation.

(f) *Factor No. 6—HUD/IHA financed houses* (Deduct 30 points). A deduction of 30 points shall be applied to applicants who own HUD-IHA houses after the project indebtedness ends, as described in § 256.6(c). These houses represent new standard housing obtained with Federal housing assistance.

(g) *Tie breaker.* If two applications are assigned the same number of points, two considerations will determine which application has priority.

(1) Tie Breaker No. 1—The applicant living in the most dilapidated conditions will receive priority.

(2) Tie Breaker No. 2—The family with the lower income will be served first.

§ 256.8 Program implementation.

The HIP will be implemented either by means of Public Law 93-638 contracts with the tribes, or administered directly by BIA, according to the HIP plans and priority of the tribe served. The HIP consists of two parts:

(a) Receipt, review, and screening of applications submitted by Indians for housing assistance, determination of eligibility, and development of applicant priority lists.

(b) Design, construction and repair/renovation of dwelling units. The implementation of HIP will be accomplished as follows:

(1) Develop and maintain a consistent and valid tribal inventory of needs.

(2) Select families and/or individuals for assistance. To accomplish this task:

(i) Develop a current inventory of HIP applicants.

(ii) Receive, review and screen all HIP applications.

(iii) Assure that HIP applications contain adequate information to determine eligibility. At a minimum, each application must include the information required in § 256.6, i.e., name, family size, income and financial status, condition of present housing, the type of housing assistance requested (Category A, B, C, or D).

(iv) Determine which HIP applicants are eligible to receive assistance and develop a priority list of applicants in accordance with the HIP Selection Criteria under § 256.7.

(v) Determine the type of assistance to be provided each selected applicant, the estimated cost and construction schedule thereof.

(c) *Applicant case file.* A case file shall be kept on each approved applicant. The case file shall contain at a minimum:

(1) Tribal enrollment information.

(2) The condition of existing housing.

(3) Family size and composition.

(4) Income.

(5) Evidence of the inability of the applicant to secure housing from other sources.

(6) Evidence that the applicant has not received HIP assistance after October 1, 1983.

The case file shall become a part of the record and must be retained for at least three years after the completion of the project.

(d) *Construction work plan.* Repair and renovation of existing housing or construction of new housing. A work plan shall be prepared specifying, by HIP Categories, the number of housing units to be repaired, renovated or built new. The repair, renovation and new housing construction work shown on the plan must be consistent with the housing assistance work specified on the priority list for each applicant. The plan shall include the following:

(1) *Category A repairs.* A description of each repair to be performed, the cost estimate for each repair, the location of each unit to be repaired, a schedule and the name of each applicant that is receiving this assistance.

(2) *Category B repairs and category D new housing.* The location of each unit to be repaired or built new, and the names of applicants to receive these

units. In addition, for Category B repairs and Category D new housing, the plan shall also include preliminary drawings, specifications, and cost estimates and a phased construction schedule for each unit to be repaired, renovated or built new. Drawings should fix and illustrate what is required to repair or build new houses by providing, when applicable, a design, elevations, unit and room total square feet, general construction, placement of heating, mechanical, electrical, and utility systems, site layout for grading and utility distribution. Specifications should describe clearly the scope of work to repair or build a new house, workmanship involved, and statement describing the quality of materials.

(3) *Category C down payments.* Description and location of the house to be purchased, verification of the applicant's intent to purchase a standard house, the sale price of the house, and a verification by the lender as to the amount of down payment and closing costs required for the applicant to qualify for the loan.

(e) *Construction start and completion dates.* An anticipated construction start and completion date for each repair and new construction project to be performed shall be established. The construction start time should take into account such factors as weather, location, family participation, availability of materials and site preparation. All HIP recipients listed on the priority list must be notified of the work to be performed.

(f) *Applicable codes.* Depending upon the type of construction involved, the appropriate local codes will be followed, or if no local codes are available, applicable State or National codes will be followed.

(g) *Reporting requirements.* Quarterly reports shall be prepared on construction work undertaken and expenditures related to that construction work. The quarterly reports are due on the 15th day after the end of each calendar quarter, and shall contain for each HIP grant, at a minimum:

(1) Name of Grantee
(2) Date of Construction start
(3) Date of Completion
(4) Cost.

§ 256.9 Inspections.

(a) The BIA is responsible for inspection or the assurance that there is adequate provision for inspection by BIA employees, contractors, or sub-contractors during the course of construction. The BIA shall have access at all reasonable times to work under contract for monitoring and inspection.

(b) Final payment for work performed will not be made until a final inspection is conducted by the BIA, and a determination is made that the work complies with all contract requirements.

§ 256.10 Appeals.

If an applicant is denied assistance through failure to obtain tribal approval under § 256.6, he/she may appeal to the BIA pursuant to 25 CFR part 2. The BIA's decision on such appeals may be appealed by the applicant or the tribe under the provision of part 2 of this chapter.

§ 256.11 Flood disaster protection.

No HIP funds, under Categories in paragraphs (b), (c), and (d) of § 256.4, will be expended in areas designated as having special flood hazards under the Flood Disaster Protection Act of 1973 (Pub. L. 93–234, 87 Stat. 977) unless the requirements for suitable flood insurance are met.

§ 256.12 Information collection.

The information collection requirements contained in § 256.5 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0084. The information will be used to determine eligibility to participate in the HIP. Individuals who wish to participate in the HIP must contact their tribes. Tribes determine eligibility based upon the criteria listed in § 256.6. Response is required to obtain a benefit. Public reporting burden for this form is estimated to average thirty minutes per response, including the time for reviewing instructions, gathering and maintaining data, completing and reviewing the form.

Walter R. Mills,

Assistant Secretary—Indian Affairs.

Appendix A—Summary of Seletion Criteria Point Schedule

Factor No. 1: Income (Up to 40 points)

If Applicant is:	Add:
At or below 125% of Poverty Income Guidelines.	10 Points.
Between 100% and 76% of Poverty Income Guidelines.	20 Points.
Between 75% and 51% of Poverty Income Guidelines.	30 Points.
At or below 50% of Poverty Income Guidelines.	40 Points.

Deduction Schedule for Income in Excess of Poverty Income Guidelines (Maximum deduction of 40 points)

If Applicant is:	Deduct:
Over 125% of Poverty Income Guidelines.	0 Points.
At or over 150% of Poverty Income Guidelines.	−10 Points.
At or over 175% of Poverty Income Guidelines.	−20 Points.
At or over 200% of Poverty Income Guidelines.	−30 Points.
201% to 225% of Poverty Income Guidelines.	−40 Points.

Factor No. 2: Family Size: (5 points per dependent child)

	Add:
Single applicant, no children	0 Points.
Single applicant, one child	5 Points.
Married couple, no children	0 Points.
Married couple, one child	5 Points.
Married or single, each additional child	5 Points.

Factor No. 3: Overcrowded Conditions (Add up to 10 Points)

Contiguous 48 States.

Depending upon the circumstances and the degree of overcrowdness, as well as the family structure, the committee reviewing HIP applicantions can award as few as 1 point or as many as 10 points for Overcrowding.

Alternative Point System for Alaska only:

	Add:
0–50 square feet per person	10 Points.
50–100 square feet per person	8 Points.
100–150 square feet per person	6 Points.
150–200 square feet per person	4 Points.
200–300 square feet per person	2 Points.

Factor No. 4: Age (Add up to 21 points) (See Appendix B)

Age 55 and older, one point per year up to 75 years.

Single Elderly, living alone=150% of Elderly schedule.

Factor No. 5: Handicapped and Disabled (Add up to 20 points)

Points will be awarded based upon extent of disability.

Factor No. 6: HUD/IHA Financed Houses: (Deduct 30 Points)

APPENDIX B—HIP SELECTION CRITERIA

[Factor No. 4—Age]

Age	Family member—100% add points	Living alone—150% add points
55	1	2
56	2	3
57	3	5
58	4	6
59	5	8
60	6	9
61	7	11
62	8	12
63	9	14
64	10	15
65	11	17
66	12	18
67	13	20
68	14	21
69	15	23
70	16	24
71	17	26
72	18	27
73	19	29
74	20	30
75 & Over	21	32

Dated: August 30, 1990.

Walter R. Mills,

Assistant Secretary—Indian Affairs.

[FR Doc. 90-21297 Filed 9-11-90; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90-20; Notice 1]

RIN 2127-AD03

Federal Motor Vehicle Safety Standards, Hydraulic Brake Systems; Brake Failure Warning Indicators

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for comment.

SUMMARY: This notice seeks public comments on a petition from Transamerican Consultant Engineers concerning the brake warning indicator requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 105. The petition seeks warnings of both a low brake fluid level in the master cylinder reservoir and a gross loss of brake pressure. The current Standard requires a warning of only one of these two conditions, at the option of the manufacturer.

DATES: Comment closing date: Comments on this notice must be received on or before October 29, 1990.

ADDRESSES: All comments on this notice should refer to Docket No. 90-20; Notice 1 and be submitted to the following: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested that 10 copies be submitted. The docket is open from 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Vernon Bloom, Crash Avoidance Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-5277).

SUPPLEMENTARY INFORMATION: NHTSA received a petition for rulemaking from Transamerican Consultant Engineers, an accident investigation engineering organization. According to the petition, a recent investigation of an automobile accident revealed a deficiency in FMVSS No. 105, the Standard relating to brake systems. The current Standard, in section S5.3.1, requires that an indicator lamp be activated when the ignition is on and any of the conditions (a), (c), or (d) occur, or, at the option of the manufacturer, whenever any of conditions (b), (c), or (d) occur. Thus, the manufacturer must have a brake warning system which activates an indicator lamp when there is a total functional electrical failure in an antilock or variable proportioning brake system (condition c) or there is application of the parking brake (condition d). In addition, a manufacturer has a choice of having the indicator lamp activated when either conditions (a) or (b) occur. Those conditions are listed below:

(a) A gross loss of pressure (such as caused by rupture of a brake line but not by a structural failure of a housing that is common to two or more subsystems) due to one of the following conditions (chosen at the option of the manufacturer):

(1) Before or upon application of a differential pressure of not more than 225 lb/in ^{2} between the active and failed brake system measured at a master cylinder outlet or a slave cylinder outlet.

(2) Before or upon application of 50 pounds of control force upon a fully manual service brake.

(3) Before or upon application of 25 pounds of control force upon a service brake with a brake power assist unit.

(4) When the supply pressure in a brake power unit drops to a level not less than one-half of the normal system pressure.

(b) A drop in the level of brake fluid in any master cylinder reservoir compartment to less than the recommended safe level specified by the manufacturer or to one-fourth of the fluid capacity of that reservoir compartment, whichever is greater.

Thus, the current Standard requires the warning light to be activated upon detection of either a low brake fluid level in the reservoir or a gross loss of pressure measured in one of four ways. (The petitioner referred to gross loss of pressure as differential pressure and NHTSA uses that terminology in this notice.) The petitioner argues that the present system is deficient because loss of half of a split brake system can occur from failure of a cup within a master cylinder without any attendant loss of fluid. The petitioner goes on to argue that, for this condition, the low fluid level indicator, one of the optional warning systems, provides no warning of the brake failure. The petitioner concludes that a warning based upon gross loss of pressure (differential pressure) should be mandatory because the low fluid level warning is inadequate when used alone. The petitioner believes that the low fluid level warning should, preferably, also be made mandatory, but could be included in the Standard as an option.

NHTSA has tentatively concluded that the petition deserves further consideration through the regulatory process. As a result, NHTSA granted the petition on April 23, 1990. However, prior to proposing an amendment that would require that a warning light be activated based on both gross loss of pressure (differential pressure) and low fluid level, the agency seeks additional information through answers to the questions posed in this notice.

NHTSA has dealt with issues similar to those presented by the petition for rulemaking in the past. The first version of FMVSS No. 105 was issued on February 3, 1967 (32 FR 2410). Among its provisions was a requirement in section S4.2.2 that:

> An electrically operated red light * * * shall illuminate before or upon application of the brakes in the event of a hydraulic-type complete failure of a partial system.

On March 1, 1967, this provision was interpreted to allow compliance by either a master cylinder reservoir level indicator light or system pressure indicator light. 32 FR 3390. However, on September 2, 1972, NHTSA issued a new Standard No. 105a, establishing requirements for motor vehicle hydraulic brake systems and parking brake systems. This new Standard required that the warning light be activated for both gross loss of pressure (also called differential pressure) and low brake fluid level. The Standard was to be effective September 1, 1974.

However, NHTSA delayed the effective date of the entire standard one year, until September 1, 1975. 38 FR 3097 (Feb. 1, 1973). NHTSA received a number of petitions for reconsideration of Standard No. 105a. Among these were ones relating to the brake warning light requirements. Ford petitioned that the brake fluid level indicator requirement be deleted and Mercedes-Benz of North America petitioned for deletion of the differential pressure warning requirement. NHTSA denied the petitions, believing that warnings of both differential pressure and low brake fluid level were necessary. 38 FR 13020 (May 1, 1973). On July 15, 1974, NHTSA deferred for one year the requirements for a brake fluid level indicator on vehicles with a gross vehicle weight rating (GVWR) over 10,000 pounds. NHTSA also clarified the intent of the provisions relating to brake warning lights. Specifically, NHTSA indicated that it intended "the fluid level indicator to warn of fluid loss due to slow leaks, and the pressure differential indicator to warn of gross pressure loss." 39 FR 25944. On March 6, 1975, NHTSA delayed the effective date of the entire standard (now numbered FMVSS No. 105–75) until January 1, 1976 for passenger cars and granted an indefinite delay for other hydraulic-braked vehicles. 40 FR 10483. On March 12, 1975, NHTSA delayed the effective date of the brake fluid level indicator requirements for passenger cars until September 1, 1976. 40 FR 11584. NHTSA determined that further field evaluation of available indicators could improve their reliability and that some delay should solve problems concerning the availability of the devices. In response to this one-year deferral, Ford Motor Company and Wagner Electric Corporation requested that the brake fluid level indicator requirements be permanently deleted. Mercedes-Benz asked that the standard be modified to allow a manufacturer to use either a differential pressure indicator or a fluid level indicator to signal a complete hydraulic-type failure of a partial system. NHTSA denied these petitions, determining that there are separate and significant benefits in each warning. NHTSA stated that it had deferred the fluid level indicator requirement only because of unresolved reliability and availability issues. 40 FR 42872 (September 17, 1975). However, on January 20, 1976, NHTSA proposed to permit a manufacturer to provide either a gross loss of pressure (differential pressure) indicator or a low brake fluid level indicator to meet the hydraulic failure indicator requirements of S5.3.1. NHTSA became convinced that the requirements for both indicators of brake failure may not have been cost-beneficial for the consumer at that time. NHTSA also tentatively concluded that the requirement for both indicators was not justified by the accident data available at that time. These data were from an Indiana University Institute for Research in Public Safety study. 41 FR 2828. NHTSA adopted this change on April 22, 1976. In adopting this amendment, NHTSA decided that its evaluation of the Indiana University study cast some doubt on its earlier conclusion that both brake warning indicators were necessary. NHTSA concluded that this doubt was sufficient to justify dropping the requirement for both devices. However, NHTSA acknowledged that the accident data upon which it based its decision were limited. 41 FR 16803.

It is clear from the history of this provision that there has been long-standing and considerable controversy over the necessity of a requirement for indicators of both gross loss of pressure (differential pressure) and low brake fluid level. After consideration of the petition from Transamerican Consultant Engineers and review of other current information, NHTSA seeks further guidance from the public on the requirements that were deleted in 1976.

NHTSA believes that a public dialogue on this potential change is justified. As pointed out by the petitioner, a low brake fluid indicator does not provide an instrument panel warning of brake system failure in some cases. For example, if any one of several primary or secondary cups within the master cylinder fails, the result can be a loss of pressure in half of the split system without any attendant loss of fluid. If there is such a failure of the first half-system, the second half will be operated at higher than normal pressure and may also fail. The result of this second-half failure would be a total loss of brake function. However, unless the vehicle has a differential pressure warning indicator, there would be no instrument panel warning of the first or second failure.

On the other hand, NHTSA acknowledges that drivers sometimes receive a "subjective" indication of such brake failures (*e.g.*, the pedal goes down even though foot pressure on the pedal has not been significantly changed). However, NHTSA believes that with some current vehicle designs, a driver would receive a similar "subjective" indication even though the brakes did not fail. That is, the normal "feel" of some new brake systems has been changed so that the pedal can do down or feel "springy" under normal operating conditions. Further, some vehicles have been designed with front-wheel drive, a front-rear split braking system, and a low brake fluid level warning indicator. Since such vehicles typically are not designed to provide a signficant amount of rear braking, the driver may not receive either an instrument panel warning or a significant "subjective" warning of failure of the rear brakes.

In a similar vein, a differential pressure warning indicator will not provide an instument panel warning of some brake system problems until they reach a more critical stage. For example, small, slow leaks can develop that do not result in significant pressure losses. Such losses can eventually lead to loss of braking in that half of the braking system where the leak developed. Here, without a low brake fluid level warning indicator, there would be a delayed instument panel warning and limited "subjective" warnings until the brake system had reached a point where braking performance was already seriously degraded. Thus, NHTSA believes that it may not be appropriate to expect drivers to heavily rely on one type of instrument panel warning or "subjective" indications of brake problems. NHTSA specifically seeks comments on this issue.

NHTSA notes that other recent developments might support the need for both types of warning indicators. The complexity of vehicles has significantly increased, making it more difficult for drivers to maintain familiarity with various mechanical systems and "subjective" indicators of performance. The trend toward self-service fuel dispensing has greatly reduced the number of times the hood is lifted for routine checking of the engine compartment and components like the master cylinder reservoir. Further, manufacturers' recommended service intervals and state motor vehicle inspection intervals are longer today. These factors limit the possibility that skilled mechanics, service personnel, or owners will detect problems related to the hydraulic brake system. In addition, vehicles are being equipped with more objective, automatic indicators in other safety and convenience areas (e.g., "high beams on," "low fuel," and "low washer/wiper fluid level" instrument panel indicators), making the driver more dependent on such automatic indicators.

While the agency believes that the petition addresses potential brake system failures, NHTSA is unable to qualify the number of accidents that

would be avoided by requiring an additional brake failure warning indicator. However, NHTSA has data indicating that 10 million master cylinders along are placed yearly. The volume of such replacements, along with the yet-to-be estimated number of hydraulic fitting, brake line and hose, slave, and wheel cylinder replacements, suggest that a large percentage of vehicles experience a hydraulic system problem during their lifetime. Thus, there is a probability that dual warning indicators could serve a useful maintenance function during a vehicle's expected lifetime. Further, if even a small percentage of hydraulic system problems occurred without an adequate indication to the driver, there is the potential for causing or contributing to a large number of accidents. In fact, a 1983 NHTSA study of police accident data indicates that brake-related problems were responsible for 1.3 percent of all accidents involving passenger cars. This percentage would currently represent about 75,000 accidents per year.

As part of assessing whether a proposed requirement for dual failure warning systems would meet the need for safety, and as part of assessing the cost-effectiveness of such a requirement, NHTSA would like to analyze better the magnitude of the safety problem that could be ameliorated by requiring such systems. In addition, NHTSA would like to analyze the extent to which the safety problem could be reduced. NHTSA would like to analyze these factors quantitatively, if possible. Therefore, quantitative data submissions would be most helpful to the agency in determining whether to proceed with rulemaking.

In the mid-1970's NHTSA ceased requiring dual warning systems because of unresolved issues concerning the reliability and availability of the systems and because NHTSA thought that the dual systems might not have been cost-beneficial to consumers. The agency desires comments on whether these concerns are still valid today. For example, concerning reliability, both the low brake fluid and differential pressure indicators have been in use for over ten years and NHTSA is not aware of significant reliability problems. In addition, both types of indicators are currently available and each type was installed in over 1,000,000 Model Year 1988 vehicles. NHTSA also believes that the dual systems of today are not a expensive as previous ones. NHTSA estimates that the average additional cost of a differential pressure indicator would be about $6.00 per vehicle, while the average additional cost of a low fluid level indicator would be about $4.00 per vehicle. The agency seeks comments on the costs and reliability of each type of system, manufacturers' rationale for the type of system installed, and plans for including both systems on new motor vehicles.

NHTSA also notes that proposing to make only the differential pressure detection warning mandatory (since the petition indicates a preference for that approach) may have some merit and specifically requests comment on this option. However, NHTSA also notes that this approach may not be as effective because a differential pressure detection system alone would not provide as advanced a warning of a slow leak within the system and thus would not provide a pre-failure warning in that case. NHTSA is also considering not changing the present Standard, which requires either a low fluid level indicator or a differential pressure indicator. NHTSA will consider these options and other options identified by commenters before proposing any amendment.

NHTSA also specifically requests comments on a number of issues relating to this rulemaking:

1. Would a requirement that a brake warning indicator be based on both fluid pressure differential and low fluid level avoid accidents involving brake failure? Is there additional information on accidents that would have been avoided by such a requirement?

2. Would making the differential pressure warning indicator mandatory be sufficient to address the safety concern? Would not requiring the low brake fluid warning indicator leave a significant safety concern?

3. The current Standard No. 105 allows the same indicator lamp to be activated for warnings of brake failure and for application of the parking brake, if a single indicator, labeled "Brake" is used. In another proceeding, NHTSA received survey data which indicated that only about 20 percent of the driving population know that, in certain cases, the brake indicator lamp warns of pending or partial brake failure. In view of this, would it be appropriate for NHTSA to require two indicator lamps, with one indicating brake failure and the other indicating application of the parking brake? On November 11, 1970, NHTSA proposed to require separate indicator lamps. 35 FR 17346. However, NHTSA did not adopt the requirement of separate indicator lamps in the final rule. 37 FR 17971 (September 2, 1972).

4. How much lead time is necessary for manufacturers to produce vehicles with both differential pressure and low fluid level warning indicators?

5. For each manufacturer, how many model year 1990 vehicles will be equipped with (1) a differential pressure warning indicator, (2) a low brake fluid level indicator, and (3) both types of indicators? Interested persons are invited to submit comments. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be sumitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be sumitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address. To the extent possible, comments filed after the closing date will also be considered. Comments will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Issued on September 6, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-21314 Filed 9-11-90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 900124-0127]

Atlantic Surf Clam and Ocean Quahog Fishery; Chincoteague

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed reopening of the Chincoteague surf clam closed area and public hearing; request for comments.

SUMMARY: NOAA proposes to reopen an area designated as the Chincoteague closed area that has been closed to surf claim fishing since 1980 due to the presence of small surf clams. Hearings are scheduled to permit presentation of information about the proposed reopening and the public is invited to comment on the proposal. This proposed reopening will allow harvest of surf clams that have been protected to allow them to produce greater yields.

DATES: Comments on the proposed reopening of the Chincoteague closed area are invited until October 12, 1990. Public hearings are scheduled as follows:

1. September 19, 1990, at 8:00 PM, Hauppauge, NY;
2. September 25, 1990, at 7:30 PM, Salisbury, MD; and
3. September 26, 1990, at 7:30 PM, Cape May Courthouse, NJ.

ADDRESSES: Send written comments to Mr. Richard B. Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930-3799. Mark the outside of the envelope "Comments on Chincoteague Closed Area". The hearings will be held at the following locations:

1. Hauppauge, NY—Radisson Hotel Islandia, 3635 Express Drive N, Hauppauge, NY;
2. Salisbury, MD—Comfort Inn, Route 13N, Salisbury, MD: and
3. Cape May Courthouse, NJ—Cape May County Extension Office, Dennisville Road, Cape May Courthouse, NJ.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Resource Policy Analyst, 508-281-9252.

SUPPLEMENTARY INFORMATION: A final rule implementing Amendment 8 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fishery (FMP) was published on June 14, 1990 (55 FR 24184). Section 652.23 (Closed areas) of the regulations was made effective on July 9, 1990. Section 652.23 specifies the actions required by the Secretary to close or reopen an area to surf clam or ocean quahog fishing. These actions include the publication of a notice in the **Federal Register** of proposed action to reopen an area previously closed to surf clam fishing, the allowance of holding a public hearing, a request for comments, and the publication of final action after consideration of the comments received.

In 1987, the Mid-Atlantic Fishery Management Council (MAFMC) recommended that the Regional Director consider reopening the Chincoteague closed area as the area had met the reopening criteria under § 652.23(b)(2)(i). This states that the Secretary may open the area if it is determined that the average length of the dominant (in terms of weight) size class in the area is equal to or greater than the prevailing minimum size. At the time, the minimum size was 5 inches. Public hearings were held in 1987 and comments received. The MAFMC further recommended that the area be opened but that this should be postponed until after Amendment 8 was approved and implemented. With the recent approval of Amendment 8 and with full implementation scheduled for September 30, 1990, the Regional Director is initiating hearings and requesting comments to respond to the MAFMC's recommendation.

Recent survey information indicates that the average size class of the surf clams in the Chincoteague area was 5.0 inches. Effective September 30, 1990, the minimum size for surf clams will be 4.75 inches unless suspended by the Regional Director. Under this minimum size, the reopening criteria for the Chincoteague area has been met. In keeping with the management philosophy adopted by Amendment 8, no effort restrictions are proposed for this area if it is reopened.

The public is invited to comment on whether the area should be opened or not, a schedule for reopening, and whether there should be effort restrictions in place if the area is opened. Upon the conclusion of the comment period, the Secretary will review the results of the hearings and any comments received and will decide whether the proposed area reopening should be effected. A final notice will be published in the **Federal Register** to inform the public of the Secretary's decision.

Classification

This action is authorized by 50 CFR part 652, and is taken in compliance with E.O. 12291.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: September 10, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, National Marine Fisheries Service.

[FR Doc. 90-21619 Filed 9-10-90; 3:06 pm]

BILLING CODE 3510-22-M

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50 CFR Part 652

[Docket No. 900124-0127]

Atlantic Surf Clam and Ocean Quahog Fishery; Georges Bank

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed closure of the Georges Bank Area and public hearing; request for comments.

SUMMARY: An emergency interim rule amending regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fishery (FMP) is in effect through November 21, 1990. The emergency interim rule closes an area known as Georges Bank to fishing for surf clams, ocean quahogs, blue mussels and other mollusks, and limits the landing of scallops to the shucked adductor muscles. This action was necessary due to high concentrations of paralytic shellfish poison (PSP) in these species. NOAA proposes to continue the closure for surf clams and ocean quahogs beyond the current effective dates in the Georges Bank area, defined as the fishing grounds east of 69 °W. longitude, and south of 42°20′ N. latitude, due to the continued high concentration of PSP. The area would remain closed for these species until the Secretary determines that the adverse environmental conditions are no longer present. Hearings are scheduled to permit presentation of additional information about the proposed closure.

DATES: Comments on the proposed area closure are invited until October 12, 1990. Public hearings are scheduled as follows:

1. September 19, 1990, at 8:00 p.m., Hauppauge, NY;
2. September 25, 1990, at 7:30 p.m., Salisbury, MD; and
3. September 26, 1990, at 7:30 p.m., Cape May Courthouse, NJ.
4. September 26, 1990, at 1:30 p.m., Southport, ME in conjunction with the September meeting of the New England Fishery Management Council.

ADDRESSES: Send written comments to Mr. Richard B. Roe, Regional Director,

National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930–3799. Mark the outside of the envelope "Comments on Georges Bank closure". The hearings will be held at the following locations:

1. Hauppauge, NY—Radisson Hotel Islandia, 3635 Express Drive N, Hauppauge, NY;

2. Salisbury, MD—Comfort Inn, Route 13N, Salisbury, MD; and

3. Cape May Courthouse, NJ—Cape May County Extension Office, Dennisville Road, Cape May Courthouse, NJ.

4. Southport, ME—Ocean Gate Motor Inn, Route 27, Southport, ME 04576.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Resource Policy Analyst, 508–281–9252.

SUPPLEMENTARY INFORMATION: Under the emergency action authority of section 305(e) of the Magnuson Fishery Conservation and Management Act, the Secretary issued an emergency interim rule effective on May 25, 1990 (55 FR 22336, June 1, 1990) closing that portion of the New England Area located east of 69 °W. longitude to fishing for surf clams, ocean quahogs, blue mussels, and other mollusks. An extension of the emergency interim rule was published on August 30, 1990 (55 FR 35435) which extends the effective date until November 21, 1990. The U.S. Food and Drug Administration has advised the NMFS that a problem still exists and has recommended that area remain closed. Testing of surf clams harvested in August determined PSP levels of between 1846 and 2700 micrograms/100 grams (μg/100g), and ocean quahogs yielded PSP levels of between 360 and 406 μg/100g. The maximum safe level for PSP toxin is 80 μg/100g. Ingestion of PSP toxin is known to cause severe illness or death in humans. For this reason, the PSP levels reported represent a severe adverse environmental condition which warrants the continued closure of the Georges Bank Area for surf clams and ocean quahogs.

Section 652.23(a) of the final regulations governing the Atlantic Surf Clam and Ocean Quahog Fishery (55 FR 24184, June 14, 1990) provides that an area may be closed to fishing for surf clams and ocean quahogs because of adverse environmental conditions. Such closure will remain in effect until the Secretary determines that the adverse environmental conditions have been corrected. Due to the continued presence of PSP, the Secretary proposes to close the Georges Bank area under § 652.23(a) to protect public health beyond the effective dates of the emergency interim rule. As required under § 652.23(c)(1), public hearings have been scheduled and written comments will be accepted. On the basis of comments received at the hearings, the Secretary will decide whether the proposed area closure should be implemented. A final notice will be published in the **Federal Register** to inform the public of the Secretary's decision.

Classification

This action is authorized by 50 CFR part 652, and is taken in compliance with E.O. 12291.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: September 10, 1990.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–21620 Filed 9–10–90; 3:06 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 55, No. 177
Wednesday, September 12, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Exemption; Tonto, Coconino, and Apache-Sitgreaves National Forests

AGENCY: Forest Service, USDA.

ACTION: Notice, Dude Fire Area decision appeal exemption.

SUMMARY: The 28,000 acre Dude Fire in Arizona damaged timber and other resources. The Tonto, Coconino, and Apache-Sitgreaves National Forests are conducting environmental analysis on the impact of this wildfire. It will be necessary to rehabilitate sections of the fire area and recover timber resources in as short a time as possible to minimize damage to the resources as a result of the fire. Damaged timber that is selected to be harvested needs to be removed within 3 months or the value will decrease due to deterioration. If decision document resulting from these environmental analysis are appealed under 36 CFR part 217 valuable time in rehabilitation and resource recovery are likely to be lost. I have therefore determined that, pursuant to 36 CFR 217.4 (a) (11), decisions involving rehabilitation and timber recovery within the Dude Fire area are exempt from appeal.

EFFECTIVE DATE: September 22, 1990.

ADDRESSES: Direct comments to: David F. Jolly, Regional Forester, 1570 Southwestern Region, USDA Forest Service, 517 Gold Avenue, SW., Albuquerque, New Mexico, 87102.

FOR FURTHER INFORMATION CONTACT: Marlin Q. Hughes, Director, Timber Management or Art Briggs, Assistant Director, Timber Management (505) 842-3240 or (505) 842-3242. Direct requests for a copy of the appeal regulation to Pat Jackson at the above address.

Dated: August 30, 1990.

David F. Jolly,

Regional Forester.

[FR Doc. 90-21296 Filed 9-11-90; 8:45 am]

BILLING CODE 3410-11-M

CIVIL RIGHTS COMMISSION

Agenda and Notice of Public Meeting; Georgia Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Georgia Advisory Committee to the Commission will convene at 3 p.m. and adjourn at 5 p.m. on September 28, 1990, at the Hyatt Regency Hotel, 265 Peachtree Street, Atlanta, Georgia 30303. The purpose of the meeting is (1) to discuss the status of the Commission; (2) hear a report on civil rights progress and/or problems in the State; and (3) to plan a project for Fiscal Year 1991.

Persons desiring additional information, or planning a presentation to the Committee should contact Committee Chairperson Rose Strong (404/563-0006) or Bobby D. Doctor, Eastern Regional Division of the Commission on Civil Rights at (202) 523-5264, TDD (202) 376-8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 4, 1990.

Wilfredo J. Gonzalez,

Staff Director.

[FR Doc. 90-21300 Filed 9-11-90; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting; Maine Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 3 p.m. on September 25, 1990, at the Howard Johnson Lodge, 110 Community Drive, Augusta, Maine 04330. The purpose of the meeting is (1) to discuss the status of the Commission; (2) hear a report on civil rights progress and/or problems in the State; and (3) to plan a project for Fiscal Year 1991.

Persons desiring additional information, or planning presentation to the committee should contact Committee Chairperson Grace Studley (207/874-8135) or John I. Binkley, Director, Eastern Regional Division at (202/523-5264), TDD (202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 4, 1990.

Wilfredo J. Gonzalez,

Staff Director.

[FR Doc. 90-21301 Filed 9-11-90; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting; Ohio Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Ohio Advisory Committee to the Commission will convene at 8 a.m. and adjourn at 6 p.m., on September 24, 1990, at the Hyatt Regency Hotel, 350 North High Street, Columbus, Ohio. The purpose of the factfinding meeting is to receive information on the impact of the Supreme Court decision, *City of Richmond* v. *J.A. Crosen* on minority set-aside programs in Ohio. The Committee will also receive information on U.S. Supreme Court decisions involving employment discrimination and what effects those decisions may have begun to have an protected classes in Ohio.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Lynwood Battle, Jr. or Melvin L. Jenkins, Director of the Central Regional Division, (816) 426-5253 (TDD 816-426-5009). Hearing impaired persons who will attend the meeting and require the services of a

sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 4, 1990.

Wilfredo J. Gonzalez,

Staff Director.

[FR Doc. 90-21302 Filed 9-11-90; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting; Rhode Island Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m. on September 27, 1990, at the Marriott Hotel, Charles and Orms Streets, Providence, Rhode Island 02904. The purpose of the meeting is (1) to orientate the rechartered committee; (2) to discuss the status of the Commission; (3) to hear a report on civil rights progress and/or problems in the State; and (4) to plan a project for Fiscal Year 1990.

Persons desiring additional information, or planning a presentation to the Committee should contact Committee Chairperson Sarah Murphy, (401/331-4290) or Bobby D. Doctor, CCR staff at (202/523-5264; TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 4, 1990.

Wilfredo J. Gonzalez,

Staff Director.

[FR Doc. 90-21303 Filed 9-11-90; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held September 25 & 26, 1990, in the Herbert C. Hoover Building, Room 1629, 14th & Pennsylvania Avenue, NW., Washington, DC. The General Session of the meeting will convene at 3 p.m. on September 25. The meeting will reconvene in Executive Session at 9 a.m. on September 26. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to computer systems or technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Status report on COCOM Core List.
4. Discussion of performance measurement proposal.
5. Discussion of 1990 Annual Reports and 1991 Work Plans.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address:

Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, Room 4069A, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377-2583.

Dated September 5, 1990.

Lee Ann Carpenter,

Acting Director, Technical Advisory Committee Unit.

[FR Doc. 90-21419 Filed 9-11-90; 8:45 am]

BILLING CODE 3510-DT-M

Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee will be held September 25, 1990, 9:30 a.m. in the Herbert C. Hoover Building, Room 1629, 14th & Pennsylvania Avenue, NW., Washington, DC. The Subcommittee was formed to review the procedural aspects of export licensing and recommended areas where improvements can be made.

Agenda

1. Opening remarks by the Chairwoman.
2. Presentation of papers or comments by the public.
3. Forum on recent regulations changes.
4. Review of the Distribution License procedure and levels.
5. Discussions of a review proposal for a COCOM standard of export enforcement.
6. Discussion of status and other issues.
7. Formation of working groups and preliminary meetings.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address:

Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, Room 4069A, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377–2583.

Dated September 5, 1990.

Lee Ann Carpenter,

Acting Director, Technical Advisory Committee Unit.

0[FR Doc. 90–21420 Filed 9–11–90 8:45 am]

BILLING CODE 3510–DT–M

Economic and Statistics Administration

Senior Executive Service: Performance Review Board

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economics and Statistics Administration Senior Executive Service (SES) Performance Appraisal System:

Susanne H. Howard—chair
Barbara E. Bryant
C. Louis Kincannon
O. Bryant Benton
William P. Butz
Charles D. Jones
Roland H. Moore
Charles A. Waite
Allan H. Young
Carol S. Carson
John E. Cremeans
Frederick T. Knickerbocker
Harry A. Scarr
Joseph F. Caponio
Robert B. Ellert
Daniel B. Levine
Katherine K. Wallman

Edward A. McCaw,

Executive Secretary, Economics and Statistics Administration, Performance Review Board.

[FR Doc. 90–21304 Filed 9–11–90; 8:45 am]

BILLING CODE 3510–BS–M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Statement of Organization, Practices and Procedures

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

Pursuant to section 302(f)(6) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*, each Regional Fishery Management Council (Council) is responsible for carrying out its functions under the Magnuson Act, in accordance with such uniform standards as are prescribed by the Secretary of Commerce (Secretary). Further, each Council must make available to the public a statement of its organization, practices and procedures (SOPP).

On January 17, 1989, NOAA published in the **Federal Register** (54 FR 1700) a final rule that revised the regulations (50 CFR parts 600, 601, 604, and 605) and guidelines concerning the operation of the Councils under the Magnuson Act. The final rule, effective February 16, 1989, implemented parts of title 1 of Public Law 99–659, amending the Magnuson Act, and among other things, clarified instructions of the Secretary on other statutory requirements affecting the Councils.

In accordance with the above-mentioned final rule, the North Pacific Fishery Management Council (North Pacific Council) has prepared its revised SOPP originally published March 1, 1977 (42 FR 11858). Interested parties may obtain a copy of the North Pacific Council's revised SOPP by contacting Clarence G. Pautzke, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone (907) 271–2809.

Dated: September 6, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–21294 Filed 9–11–90; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board, Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 1 October 1990.

Time: 1300–1730 hours.

Place: Ballistic Research Laboratory, APG.

Agenda: The Army Science Board Ad Hoc Subgroup on Electromagnetic and Electrothermal Technologies will meet to review electrothermal propulsion and selected armor/anti-armor topics. This meeting will be closed to the public in accordance with section 552(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–0781/ 0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90–21287 Filed 9–11–90; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board, Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 1 October 1990.

Time: 0900–1600.

Place: Aberdeen Proving Ground, Maryland.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on Independent Technical Review of Army Research and Development Accomplishments will meet to review and select from articles on projects submitted by Major Commands. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90–21288 Filed 9–11–90; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board, Office of the Assistant Secretary, Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 1–5 October 1990

Time: 0715–1700 hours each day

Place: Aberdeen Proving Ground, MD

Agenda: The 1990 Army Science Board Fall General Membership Meeting will include: 2 Oct, 0800–1600-Closed, 3 Oct, 0800–1130-Closed, 4 Oct. 0830–1630-Closed, 5 Oct. 0800–1130-Open.

Subjects to be discussed during the ASB portion of the meeting include briefings on all studies conducted during the past Fiscal Year. The new Issue Groups will meet for the first time, and the Board will participate in the classified portions of the AMC Technology Show. Those portions of the meeting indicated above (2–3–4 Oct) will be closed to the public in accordance

with section 552(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The Friday meeting (October 5) is open to the public. The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrator Officer, Sally Warner, may be contacted for further information at (202) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90–21411 Filed 9–11–90; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Public Hearing for the Draft Environmental Impact Statement for Possible Base Closure Realignment of Naval Air Station South Weymouth, MA

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, The Department of the Navy prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for possible base closure/realignment of Naval Air Station (NAS) South Weymouth, Massachusetts.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups and the media. In addition, the DEIS has been distributed to the following libraries:

Tufts Library, 46 Broad Street, Weymouth, MA 02188
Burton Wales Library, 33 Randolph Street, Abington, MA 02351
Franklin Pratt Library, 1400 Pleasant Street, East Weymouth, MA 02189
Memorial Library, 336 Union Street, Rockland, MA 02370
Fogg Library Columbian Square, South Weymouth, MA 02190
Hingham Library, 66 Leavitt Street, Hingham, MA 02042

A limited number of single copies are available at the address listed at the end of this notice.

A public hearing to inform the public of the DEIS findings and to solicit comments will be held on September 27, 1990, from 2 pm until 5:30 pm, and from 7 pm until midnight at the South Junior High School., 360 Pleasant Street, Weymouth, Massachusetts.

The public hearings will be conducted by the U.S. Navy. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to fice (5) minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by October 1, 1990, to become part of the official record.

On January 29, 1990, the Secretary of the Defense announced a list of defense installations to be studied for possible closure/realignment in response to possible reductions in military force structure. Included on this list was Naval Air Station South Weymouth.

Alternatives considered in the DEIS are closure of NAS South Weymouth and No Action. Under the closure alternative, all naval units/activities would either be disestablished or relocated to other Defense Department installations. The DEIS also considers retaining certain facilities in operation at the Station for a Naval Air Reserve Center for air reinforcing/sustaining reserve untis, and also maintaining family housing units at the Station and/or at the remote housing site in Squantum, Massachusetts. The No Action alternative considers the continuation of functions at NAS South Weymouth, though some reduction in operation could occur as a result of force structure reductions. No preferred alternative has been identified in the DEIS.

The direct impacts of closure would result in the loss of about 913 military personnel and 199 direct-hire civilian positions. In addition, closure would result in the loss of about 125 additional civilian positions. About 1,887 reservists would either have to find alternative reserve billets within the commuting distance, travel to a distant drill site, or transfer to the standby or inactive reserves. Community services/facilities would also be impacted by a decision to close the Station. Local school systems would loose annual federal impact aid if Station family housing is not retained. Also, closure of the Station fire department would have a major impact on fire protection services in the surrounding communities as Station fire fighters respond to community emergencies about once a week.

There are recognized unmitigated hazardous material sites on NAS South Weymouth that would have to be remediated as necessary in accordance with the Navy's Installation Restoration Program. This remediation would be accomplished whether or not these naval installations are closed.

Under the closure alternative new construction would be required at several of the receptor locations where functions may be transferred.

Additional information concerning this notice may be obtained by contacting the Commanding Officer, Northern Division, Naval Facilities Engineering Command, (Attn: Mr. Robert Ostermueller, Code 202.2, telephone (215) 897–6262), Building 77L, U.S. Navy Base, Philadelphia, PA 19112–5000.

Dated: September 10, 1990.

Patrick Carney,

Commander, JAGC, USN, Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 90–21612 Filed 9–11–90; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.219]

Student Literacy Corps, Inviting Applications for New Awards for Fiscal Year 1991

PURPOSE OF PROGRAM: To provide grants to higher education institutions to establish for academic credit, courses of instruction that combine training of undergraduate students in various academic departments with experience as tutors in public community agencies that serve educationally or economically disadvantaged individuals.

APPLICABLE REGULATION: The Education Department General Administration Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, and 85.

SELECTION CRITERIA: In evaluating applications for grants under this program, the Secretary uses the EDGAR selection criteria in 34 CFR 75.210.

The regulations in 34 CFR 75.210(c) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Plan of Operation: (34 CFR 75.210(b)(3)). The 15 points are added to this criterion for a possible total of 30 points

Deadline for Transmittal of Applications: November 5, 1990.

Deadline for Intergovernmental Review: January 10, 1991.

Applications Forms Available: September 19, 1990.

Available Funds: The President's budget request for Fiscal Year 1991 includes $5,042,000 for the Student Literacy Corps. The Congress has not yet completed action on the Fiscal Year 1991 appropriations. The estimates given on this page assume passage of the President's budget.

Estimated Range of Awards: Up to $50,000.

Estimated Average Size of Awards: $46,000.

Estimated Number of Awards: 90–100.

Note: The Department is not bound by any estimates in this notice.

Project Period: 24 months.

FOR APPLICATIONS OR INFORMATION CONTACT: Diana Hayman, U.S. Department of Education, 7th and D Streets, SW., room 3022, Washington, DC 20202–5251. Telephone: (202) 708–8394 or 708–7389.

Authority: 20 U.S.C. 1018, 1018F.

Dated: September 6, 1990.

Leonard L. Haynes III

Assistant Secretary for Postsecondary Education.

[FR Doc. 90–21346 Filed 9–11–90; 8:45 am]

BILLING CODE 4000–01–M

Membership of the Performance Review Board

AGENCY: Department of Education.

ACTION: Notice of membership of the Performance Review Board.

SUMMARY: Notice is hereby given of the names of members of the Department of Education Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Althea Watson, Director, Executive Resources Staff, Personnel Management Service, Office of Management, Department of Education [room 1187A, FOB 6], 400 Maryland Avenue, SW., Washington, DC 20202, Telephone: [202] 401–0546.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review and evaluate the initial appraisal of a senior executive's performance along with any comments by other senior executives and any higher level executive and make recommendations to the appointing authority relative to the performance of the senior executive.

Membership

The following executives of the Department of Education have been selected to serve on the Performance Review Board of the *Department of Education:* Thomas Anfinson, Chair; Mary Jean LeTendre, Co-Chair; Gary Rasmussen, John Childers, Rita Esquivel, Michael Vader, Gilbert Roman, Bruno Manno, and Steven McNamara. The appointments of Alicia Coro, Milton Goldberg, Thomas Skelly, Carol Cichowski, William Smith, Charles O'Malley, Susan Craig, Theodore Sky, John Haines, Carl O'Riley, and Dick Hays are to be continued. The following executives have been selected to serve as alternate members of the Performance Review Board: Richard LaPointe, Emerson Elliott, Vera Winkler, and Judy Schrag.

Dated: September 5, 1990.

Thomas E. Anfinson,

Deputy Under Secretary for Management.

[FR Doc. 90–21347 Filed 9–11–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Floodplain Involvement Notification for the Construction of Two Storage Buildings at the National Institute for Petroleum and Energy Research (NIPER), Bartlesville, OK

AGENCY: Department of Energy.

ACTION: Notice of floodplain involvement.

SUMMARY: The Department of Energy (DOE) proposes to construct two storage buildings at the National Institute for Petroleum and Energy Research (NIPER) in Bartlesville, Oklahoma. Pursuant to the regulations of 10 CFR part 1022 ("Compliance with Floodplain/Wetlands Environmental Review Requirements"), the DOE has determined that this action would involve activities within a floodplain, and therefore, the following notice is submitted for public review and comment.

Before proceeding with the proposed action, DOE must find that there is no practicable alternative to locating in the floodplain (10 CFR 1022.15). To assist in making this finding, DOE will prepare a floodplain assessment pursuant to 10 CFR 1022.12. The assessment will discuss the effects of the proposal and describe potential alternatives and mitigation measures.

DATES: Any comments are due on or before September 27, 1990.

ADDRESSES: Address comments or requests to the Bartlesville Project Office, U.S. Department of Energy, P.O. Box 1398, Bartlesville, Oklahoma 74005.

FOR FURTHER INFORMATION CONTACT: Alex Crawley, Environmental Coordinator, Bartlesville Project Office, U.S. Department of Energy, Bartlesville, Oklahoma 74005 (918) 337–4406.

SUPPLEMENTARY INFORMATION:

I. Site and Project Description

Site Description

The proposed project is located at NIPER on the northern edge of Bartlesville, Oklahoma in Washington County, about 50 miles north of Tulsa, and lies in the 100 year floodplain of the Caney River. The population of Bartlesville is approximately 37,000. The topography of Bartlesville consists of rolling countryside with an average elevation of about 700 ft. The major watershed system is the Caney River which runs through Bartlesville.

NIPER is located on 15.7 acres of flat terrain, with no streams flowing through it. The research facilities consist of laboratories, offices, workshops, etc., with a total floor area of 118,000 square feet.

There are residential areas on three sides of the NIPER facility. Commercial and industrial buildings are located about 0.5 miles west of the site, and the Caney River flows within 0.5 miles of the site's northern boundary.

Project Description

NIPER has proposed the construction of two storage buildings:

(1) A structure is required to store drums of petroleum samples used in laboratory research projects where they will not be subject to the elements which cause container deterioration and alter the composition of the contained samples. It is also necessary to have drum storage which will protect the environment from hydrocarbon contamination.

The building proposed for this purpose is a 16′×40′ roof over a concrete pad with an 8″ lip to act as a safety berm to contain any accidental spill. The elevating fill area will be 6′ high, 24′×55′ sloping away at a 45 degree angle to the original ground surface.

(2) The second storage building is needed to relieve the crowded condition caused by the storage of unused instrumentation in the laboratory.

The building proposed for this purpose is a 40′×80′ pre-engineered steel building on a 4″ reinforced slab with a 12″×18″ perimeter foundation.

The building is proposed to be constructed on a pad elevated 7' above the surrounding terrain with earth fill. The pad at the foot is 132'×192' and at the top is 60'×120'.

II. Floodplain Effect

The only environmental impact-producing factor associated with the proposed action is the floodplain. Adverse impacts can be grouped into two categories. They are the impact to the floodplain and the impact of flooding on the structures proposed to be constructed in the floodplain.

The segment proposed for construction in the floodplain is in a pocket or backwater area where it will not impede the flow of the stream during overflow. The only potential impacts would be volume displacement and encouragement of further development. Volume displacement will be minimized by the acquisition of elevating fill-dirt from the floodplain at a location near the construction site. The fill dirt will be acquired from a site approximately one half mile north of the construction site within the floodplain. The second potential impact is the intensification of other development in the floodplain. The development planned is not expected to encourage the other development.

The proposed development is on the edge of the floodplain. Adjacent property not owned by DOE has much more severe flooding potential, such that the economics for flood protection would present a significant problem for developers.

Damage control for the structures and contents will be accomplished by the elevation of the two facilities to meet DOE and local requirements. The floor of any new structure is required to be elevated to 1 foot above the base or 100 year flood level. The storage building for the laboratory instruments is planned to have a flood elevation of 679 ft. which is 3 ft. above the base flood level. The proposed fuel-drum building is considered a "critical action." Therefore, its floor will be elevated above the 500 year flood level of 681 ft.

Signed in Washington, DC this 31st day of August, 1990.

Robert H. Gentile,

Assistant Secretary, Fossil Energy.

[FR Doc. 90-21360 Filed 9-11-90; 8:45 am]

BILLING CODE 6450-01-M

Procurement and Assistance Management Directorate; Colorado School of Mines

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of restricted eligibility for grant award.

SUMMARY: DOE announces that it plans to award a grant to the Colorado School of Mines (CSM) in the amount of $75,000 for fiscal year 90, in partial support of the Thirteenth Summer Field Institute entitled "Energy and Mineral Opportunities, Problems and Policy Issues." Pursuant to § 600.7(b)(2)(i)(B) of the DOE Financial Assistance Rules, 10 CFR part 600, DOE has determined that eligibility for this grant award shall be limited to the Colorado School of Mines.

PROCUREMENT REQUEST NUMBER: 01-90FE62168.000.

SUPPLEMENTARY INFORMATION: Each year since 1978, the Colorado School of Mines has successfully conducted a Summer Institute on Western Energy and Minerals Opportunities which has provided important background information for Congressional and Executive staff engaged in developing energy related legislation.

The Colorado School of Mines is the only institute with 8 years of previous experience in conducting this particular summer institute which has given CSM a capability that is currently unique. There is no other such source now providing a comparable session. The CSM Summer Field Institute is primarily for senior staff members from Congress, GAO, OMB etc. The Institute holds its two 1-week programs in July and during the Congressional break in August for each year of the program.

Therefore, the DOE has determined that this award to the Colorado School of Mines on a restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT: Shirley Jones, PR-321.1, U.S. Department of Energy, Office of Placement and Administration, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-1113.

Jeffrey Rubenstein,

Director, Operations Division "A", Office of Placement and Administration.

[FR Doc. 90-21361 Filed 9-11-90; 8:45 am]

BILLING CODE 6450-01-M

Advisory Committee on Nuclear Facility Safety, Notice of Open and Closed Meetings

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Advisory Committee on Nuclear Facility Safety.

Date & Time: Monday, September 24, 1990, 8 a.m. to 9 a.m.-Closed 8 p.m. to 10 p.m. Tuesday, September 25, 1990, 8 a.m. to 5 p.m.

Place: Los Alamos Inn, KIVA and Peacepipe Rooms, 2201 Trinity Drive, Los Alamos, New Mexico 87544.

Subject: Environmental Health, and Safety Programs at LANL; Technical Issues at Selected LANL Facilities.

Contact: Wallace R. Kornack, Executive Director, ACNFS, AC-21, 1000 Independence Ave., SW., Washington, DC 20585, 202/586-1770.

Purpose of the Committee: The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Tentative Agenda

September 24, 1990

8 a.m. Closed Meeting at Los Alamos National Laboratory (LANL).
9 a.m. Adjourn Until 8 p.m.
8 p.m. Public Comment Session.
10 p.m. Adjourn until 8 a.m. on September 25, 1990.

September 25, 1990

8 a.m.
- Chairman John F. Ahearne Opens Meeting.
- Environmental, Health, and Safety Programs at LANL; Technical Issues at Selected LANL Facilities.

12 Noon Lunch.
1 p.m.
- Meeting Resumes.
- Technical Issues at Selected LANL Facilities.
- Subcommittee Reports.
- Committee Business.

5 p.m. Meeting ends.

Public participation: The meeting is open to the public from 8 p.m. until 10 p.m. on September 24, 1990 and from 8 a.m. until 5 p.m. on September 25th. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Closed meeting: Pursuant to section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended (U.S.C. app. II (1982)), part of these

advisory committee meetings concerns matters listed in 5 U.S.C. 552b(c)(1) and that accordingly, on September 24, 1990, from approximately 8 a.m. until 9 a.m., the meeting will be closed to the public.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading room, IE-190, Forrestal Building, 1000 Independence Ave., SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on September 6, 1990.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 90-21358 Filed 9-7-90; 10:19 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. EL89-33-000, et al.]

Electric Rate, Small Power Production, and Interlocking Directorate Filings; Green Mountain Power Corp. et al.

1. Green Mountain Power Corp.

[Docket No. EL89-33-000]

August 28, 1990.

Take notice that the following filings have been made with the Commission.

Take notice that on August 10, 1990, Green Mountain Power Corporation (GMP) tendered for filing an Amendment to the Lease Agreement between GMP and International Business Machines Corporation (IMB) which deleted a provision of the Lease Agreement under which GMP was to operate the gas turbines to supply electricity to IBM when GMP's regular utility service to IBM's main plant in Essex Junction, Vermont was interrupted. According to GMP, GMP and IBM have negotiated alternative arrangements under which GMP will maintain retail service to IBM under such circumstances.

On August 14, 1990, GMP submitted for filing the arrangements under which GMP is to maintain service to IBM in a Metering Agreement between IBM and GMP.

Comment date: September 6, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. New York Power Pool

[Docket No. ER90-562-000]

August 31, 1990.

Take notice that on August 29, 1990, the Member Electric Corporations of the New York Power Pool (NYPP) tendered for filing with the Commission (1) a redesignation of four pool-related agreements and (2) two changes in rates, namely, the Supplemental Capability Charge (Schedule C-1 of the NYPP Agreement) and the Capability Deficiency Charge (Schedule B of the NYPP Agreement). These changes are proposed to be effective October 29, 1999. All NYPP members have agreed to the proposed changes as well as the proposed effective date. Copies of the filing have been sent to the NYPP members and to the New York Public Service Commission.

Comment date: September 17, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Southern California Edison Co.

[Docket No. EC90-17-000]

August 31, 1990.

Take notice that on August 20, 1990, Southern California Edison Company (Edison), pursuant to section 203 of the Federal Power Act, 16 U.S.C. 824b, tendered for filing an application for an order authorizing the sale of two 161 kV transmission lines (a total of three miles in length) to Imperial Irrigation District (IID).

On January 29, 1990, Edison and IID executed the Sale Agreement between Imperial Irrigation District and Southern California Edison Company. In accordance with the Sale Agreement, IID will purchase Edison's interest in the Yuma-Axis Generating Station (Axis Station) and related properties which include two 161 kV lines, each of which is approximately 1-½ miles in length. One of the 161 kV lines interconnects the Axis Station in Yuma County, Arizona, with IID at IID's Pilot Knob Substation in Imperial County, California. The other is currently unused and extends from the Pilot Knob Substation to the California-Mexico border. Upon completion of the sale of Axis Substation, IID is expected to use the 161 kV line from Axis Station to IID's Pilot Knob Substation to transmit its share of the Axis Station generation to its service territory.

Copies of this Application have been served upon the state commissions of Arizona and California.

Comment date: September 17, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Daniel J. Krumm

[Docket No. ID-2491-000]

August 31, 1990.

Take notice that on August 28, 1990, Daniel J. Krumm filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director; Centel Corporation.

Director; Partnership Mutual Life Insurance Company.

Comment date: September 17, 1990, in accordance with Standard Paragaph E at the end of this notice.

5. Gilbert W. Moorman

[Docket No. ID-2489-000]

August 31, 1990.

Take notice that on August 23, 1990, Gilbert W. Moorman tendered for filing an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Vice President; Central Illinois Public Service Company.

Director; Electric Energy, Inc.

Comment date: September 17, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Daniel J. Evans

[Docket No. ID-2490-000]

August 31, 1990.

Take notice that on August 24, 1990, Daniel J. Evans tendered for filing an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director; Puget Sound Power & Light Company.

Director; Washington Mutual Savings Bank.

Director; W.M. Financial, Inc.

Comment date: September 17, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. Arkansas Power and Light Co.

[Docket No. ER90-559-000]

August 31, 1990.

Take notice that Arkansas Power and Light Company (AP&L) tendered for filing on August 27, 1990, a proposed Agreement for Wholesale Power Service (Power Agreement), Service Area Boundary Agreement (Boundary Agreement) and Interchange Agreement between AP&L and Union Electric Company (UE). The Power Agreement, Boundary Agreement and the Interchange Agreement (collectively Agreements) are being filed in connection with a sales agreement whereby AP&L would sell to UE the facilities currently used by AP&L to provide retail electric service within the State of Missouri, and UE would thereafter provide the retail electric service to those customers. AP&L proposes an effective date for the Agreements the day following the

"closing date" as defined in the Sales Agreement.

Under the proposed Interchange Agreement, the parties will operate their systems in synchronization and will cooperate in furnishing to each other such quantities of electric power and energy as either party may request, subject to the terms and conditions contained within the Interchange Agreement. The Boundary Agreement permits one party to request the other to extend distribution facilities to customers of the requesting party when it is more reasonable for such line extensions to be constructed by the other party.

Under the Power Agreement, UE has agreed to purchase certain quantities of power and energy from AP&L, in accordance with terms and conditions contained therein. The Power Agreement shall have an initial term of ten years from its effective date.

AP&L requests waiver of the necessary Federal Energy Regulatory Commission regulations so that the Agreements may take effect as of the date requested.

A copy of the filing was served upon Union Electric Company, the Arkansas Public Service Commission and the Missouri Public Service Commission.

Comment date: September 17, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Naheola Cogeneration Limited Partnership

[Docket No. QF90-215-000]

August 31, 1990.

On August 22, 1990, Naheola Cogeneration Limited Partnership (Applicant), of 1177 West Loop South, Suite 900, Houston, Texas 77027, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Pennington, Alabama at the site of the James River Pennington Naheola Mill. The facility will consist of a black liquor chemical recovery unit, two wood/coal fired boilers, three oil/natural gas fired boilers and three extraction steam turbine generators. Thermal energy, in the form of extraction steam, will be used for pulp and paper manufacturing operations. The net electric power production capacity of the facility will be 31.7 MW. Applicant states that the primary energy sources for the facility are process black liquor (59.76%), wood (13.24%), coal (14.56%) and gas or oil (12.44%). Installation of the facility is expected to begin in December 1990.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

9. Sumas Energy, Inc.

[Docket No. QF90-217-000]

August 31, 1990.

On August 24, 1990, Sumas Energy, Inc., of 17411 NE. Union Hill Road, Suite 290, Redmond, Washington 98052, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in the City of Sumas, Washington. The facility will consist of a combustion turbine generator, a heat recovery steam generator, and a condensing steam turbine generator. Thermal energy recovered from the facility will be used for lumber drying. The electric power production capacity of the facility will be approximately 58 MW. The primary source of energy will be natural gas. Construction of the facility is scheduled to begin in fall of 1990.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

10. Grayling Generating Station Limited Partnership

[Docket No. ER90-561-000]

August 31, 1990.

Take notice that Grayling Generating Station Limited Partnership (Grayling), a Michigan limited partnership, on August 28, 1990, tendered for filing, pursuant to 18 CFR 25.1 and 35.12, proposed FERC Rate Schedule No. 1, applicable to sales of energy and capacity to Consumers Power Company (Consumers) from a biomass waste wood electric generating facility owned and operated by Grayling in Grayling Township, Crawford County, Michigan (the "Facility"). The facility is certified as a qualifying small power production facility within the meaning of sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978 and the regulations promulgated thereunder.

The proposed initial rate is set forth in the Power Purchase Agreement, as amended (the "Agreement"), between Grayling and Consumers. The agreement establishes a purchase price based on Consumer's avoided cost and applicable to all electricity delivered by Grayling to Consumers. The purchase price includes both an energy charge and a capacity charge.

Consumers will pay for energy on a per kilowatt hour basis. Consumers will pay a capacity rate commencing on the date of commercial operation. The capacity rate represents a levelized average rate of 4.05 cents per kilowatt hour for a dispatchable plant as defined in the Agreement. The energy rate is composed of the energy charge associated with fixed expenses and the energy charge associated with variable expenses. The energy rate is redetermined every month pursuant to the formulas set forth in the Agreement.

Grayling requests waiver of the Federal Energy Regulatory Commission's (the "Commission") notice requirements so that the rate schedule may take effect as of the date of the Grayling's initial delivery to Consumers. Grayling also seeks waiver of the Commission's requirements for filing changes in its Rate Schedule No. 1 in the event of any change in the rates calculated pursuant to the formulas as set forth in the Agreement.

Additionally, Grayling seeks waiver of the Commission's regulations regarding cost-of-service documentation, accounting practices, reporting requirements, property dispositions and consolidations, securities issuances or assumptions of liability, the holding of interlocking positions and such other matters as the Commission deems appropriate. Grayling has requested expedited consideration of this filing to facilitate the commencement of construction of and closing for obtaining financing for the Facility which are scheduled for October 1, 1990.

Copies of the instant filing have been served upon Consumers and the Michigan Public Service Commission.

Comment date: September 17, 1990, in accordance with Standard Paragraph E at the end of this notice.

11. Upper Peninsula Power Co.

[Docket No. ER90-560-000]

August 31, 1990.

Take notice that on August 28, 1990 the Upper Peninsula Power Company (UPPCO) tendered for filing proposed changes in the rate schedules for service to the Alger-Delta Cooperative Electric Association, the Ontonagon County Rural Electrification Association, Village of Baraga, City of Escanaba, City of Gladstone, Village of L'Anse, City of Negaunee, Wisconsin Electric Power Company, and Edison Sault Electric Company.

The Upper Peninsula Power Company assert that the filing is in accordance with Part 35 of the Commission's Regulations. UPPCO states that the schedule in the rate filed will supersede the schedule presently on file with this Commission.

The proposed changes would increase revenues for these jurisdictional sales based on the Period I test period ended December 31, 1989 by $469,102. UPPO proposes that the rate increase become effective 61 days after the filing, on October 28, 1990.

The reason stated by UPPCO for the increase is to overcome the revenue deficiency from this type of service occasioned by the continued inflationary impact on its costs.

UPPCO has also proposed to return to these jurisdictional customers their portion of the Capital Gain associated with the sale of Upper Peninsula Generating Company to Wisconsin Electric Power Company. UPPCO proposes to refund the amount over a two-year period in a kWh basis beginning in December 1990.

Copies of the filing were served upon UPPCO's affected jurisdictional customers, and the Michigan Public Service Commission.

Comment date: September 17, 1990, in accordance with Standard Paragraph E end of this notice.

12. Northeast Utilities Service Co.

[Docket No. ER90-558-000]

August 31, 1990.

Take notice that on August 27, 1990, Northeast Utilities Service Company (NUSCO) acting as Agent for the Connecticut Light and Power Company (CL&P) and Western Massachusetts Electric Company (WMECO, and together with CL&P, the NU Companies) tendered for filing as a rate schedule an agreement (the Agreement) between the NU Companies and Green Mountain Power Corporation (GMP). The Agreement, dated as of February 1, 1988, provides for the NU Companies to sell system energy or for the NU Companies to exchange system energy for an entitlement in capacity from GMP's system that may be available on a daily or weekly basis. This Agreement shall supersede the System Power Sales Agreement between the parties dated May 4, 1982.

NUSCO requests that the Commission waive its customary notice period and filing requirements to the extent necessary to allow the Agreement to become effective on February 1, 1988.

GMP has filed a Certificate of Concurrence in this docket.

The Agreement has been executed by the NU Companies and by GMP and copies have been mailed or delivered to each of them.

NUSCO further states that the filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: September 17, 1990, in accordance with Standard Paragraph E at the end of this notice.

13. Orange and Rockland Utilities, Inc.

[Docket No. ER90-565-000]

September 4, 1990.

Take notice that on August 29, 1990, Orange and Rockland Utilities, Inc. (Orange and Rockland) tendered for filing pursuant to Federal Energy Regulatory Commission's order issued January 15, 1988 in Docket No. ER88-112, an executed Service Agreement between Orange and Rockland and Orange Development Corporation.

Comment date: September 20, 1990, in accordance with Standard Paragraph E at the end of this notice.

14. Northern States Power Co.

[Docket No. ER88-72-002]

September 4, 1990.

Take notice that on August 15, 1990, Northern States Power Company submitted for filing its refund report in the above referenced docket.

Comment date: September 14, 1990, in accordance with Standard Paragraph E at the end of this notice.

15. Nantahala Power and Light Co.

[Docket No. ER90-312-000]

September 4, 1990.

Take notice that on August 29, 1990, Nantahala Power and Light Company (Nantahala) amended its filing in this docket to reflect a settlement with its resale customers.

Nantahala states that the changes reflected in this filing are to the capitalization ratios and rate of return utilized in the COSAC rate tariff.

Comment date: September 20, 1990, in accordance with Standard Paragraph E at the end of this notice.

16. American Electric Power Service Corp.

[Docket No. ER90-563-000]

September 4, 1990.

Take notice that American Electric Power Service Corporation (AEPSC), on behalf of Appalachian Power Company (APCO) and Indiana Michigan Power Company (I&M), on August 30, 1990, tendered for filing proposed changes in an agreement among I&M, APCO, and the Carolina Power & Light Company (CP&L), which has been designed I&M Rate Schedule FERC No. 77, APCO Supplement No. 21 to Rate Schedule FPC No. 24 and CP&L Supplement No. 9 to Rate Schedule FPC No. 44. The proposed changes would increase revenues from jurisdictional sales and service by an estimated annualized $2.4 million based on the 12-month period ending December 31, 1990.

The filing proposes, effective November 1, 1990, an increase in the charge for transmission service under the Agreement, reflecting updated costs of service.

Copies of the filing were served upon CP&L, the Indiana Utility Regulatory Commission, the Michigan Public Service Commission, the State Corporation Commission of Virginia, the Public Service Commission of West Virginia, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: September 20, 1990, in accordance with Standard Paragraph E at the end of this notice.

17. New England Power Pool

[Docket No. ER90-564-000]

September 4, 1990.

Take notice that on August 30, 1990, the New England Power Pool (NEPOOL) Executive Committee, tendered for filing a Supplement to the New England Power Agreement, dated as of September 1, 1971 and amended by twenty-six amendments. NEPOOL states that the Supplement increases participant capability responsibility charges specified in a previous Supplement to the New England Power Pool Agreement for the twelve-month pool Power Year commencing November 1, 1990.

NEPOOL states that the pool Capability Responsibility adjustment charge and Capability Responsibility deficiency charge have been changed pursuant to sections 9.4(h) and 9.4(d) of the NEPOOL Agreement in order to accomplish the bulk power reliability objectives of the pool and to provide for the equitable sharing of pool costs and benefits. The NEPOOL Executive Committee has requested that the changed Capability Responsibility charges be permitted to become effective on November 1, 1990, the beginning of the next pool Power Year.

Comment date: September 20, 1990, in accordance with Standard Paragraph E end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-21317 Filed 9-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-2047-000, et al.]

Natural Gas Certificate Filings; Southern Natural Gas Co. et al.

August 30, 1990.

Take notice that the following filings have been made with the Commission.

1. Southern Natural Gas Company

[Docket No. CP90-2047-000]

Take notice that on August 23, 1990, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP90-2047-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon firm sales service for South Georgia Natural Gas Company (South Georgia), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states that it is currently authorized to sell and deliver to South Georgia an aggregate contract demand of up to 71,212 Mcf of natural gas per day. Southern further states that South Georgia has filed in related Docket No. CP90-1661-000 for permission and approval to partially abandon firm sales service to 21 customers by 5,257 Mcf per day and to reallocate 1,835 Mcf per day of the abandoned volumes to two other customers. Accordingly, South Georgia has requested a reduction in its contract demand from Southern by 3,422 Mcf per day to coincide with the reduction on its own system. It is stated that such a reduction of contract demand from Southern will balance South Georgia's contract demand with its obligations to its customers.

Southern states that the proposed abandonment of contract demand would not require the abandonment of any facilities. Southern also states that it would continue to use all of its available capacity to meet the demands for both transportation and sales service on a peak day.

Comment date: September 20, 1990, in accordance with Standard Paragraph F at the end of this notice.

2. Williams Natural Gas Co.

[Docket No. CP90-2050-000]

Take notice that on August 23, 1990, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP90-2050-000 a request pursuant to § 157.205 of the Commission's Regulations for permission to replace the Kansas Power & Light Company (Kansas Power) Alba-Purcell high pressure regulator setting and install measuring and appurtenant facilities and to reclaim the Kansas Power Alba and Purcell town border settings located in Jasper County, Missouri under Williams' blanket certificate issued in Docket No. CP82-479-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams states that by reclaiming the Alba-Purcell high pressure regulator and appurtenant facilities and replacing it with new measuring, regulating and appurtenant facilities at the same location would allow Wiliams to abandon both the Alba and Purcell town border sites. The combination of the town border locations and the high pressure regulator into a single location would eliminate maintenance at three separate locations, enable Williams to measure natural gas at a single location and allow for more efficient operation of William's system, it is stated. The projected volumes of delivery through the replacement facilities is not expected to exceed the volumes currently being delivered of 19,498 Mcf per year at Alba and 18,822 Mcf per year at Purcell with a maximum peak day volume of 182 Mcf at Alba and 169 Mcf at Purcell, it is indicated. Williams states that the reclaim cost is estimated to be $6,418 with a salvage value of $1,180 and that the estimated cost of construction is approximately $18,072, which would be paid from funds on hand.

Williams states that this change is not prohibited by an existing tariff and it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers. Williams further states that Kansas Power is aware of and has agreed to the proposals set forth herein.

Comment date: October 15, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Williams Natural Gas Co.

[Docket No. CP90-2051-000]

Take notice that on August 23, 1990, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP90-2051-000 a request pursuant to § 157.205 of the Commission's Regulations for permission and approval to abandon in place approximately 1.6 miles of 2-inch lateral pipeline and appurtenant facilities located in Douglas and Jefferson Counties, Kansas and the transportation of gas through these facilities under Williams' blanket certificate issued in Docket No. CP82-479-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams proposes to abandon, in place, approximately 1.6 miles of 2-inch lateral pipeline originally installed for the delivery and sale of natural gas to the KPL Gas Service Company for resale and delivery of natural gas to Magnolia Pipe Line Company for use as fuel at its Williamstown Pump Station. Williams states that the sale to the pump station terminated in June, 1987, and the pump station was reclaimed in 1988. Williams further states that there are no other customers connected to or being served by the pipeline to be abandoned and the landowners affected by the abandonment have agreed to the abandonment. The reclaim cost is estimated to be $30 with no salvage value.

Comment date: October 15, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Great Lakes Gas Transmission

[Docket No. CP90-2053-000]

Take notice that on August 23, 1990, Great Lakes Gas Transmission Company (Great Lakes) One Woodward Avenue, Suite 1600, Detroit, Michigan 48226, filed in Docket No. CP90-2053-000 an application pursuant to section 7 of the Natural Gas Act and subpart F of part 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the construction and operation of certain facilities, for permission and approval to abandon certain facilities, and to perform other minor transactions eligible thereunder, all as more fully set forth in the application which is on file with the

Commission and open to public inspection.

It is stated that such a certificate would allow Great Lakes to perform the following activities: (1) construction, acquisition, operation and miscellaneous rearrangement of facilities; (2) sales for resale; (3) construction and operation of sales taps; (4) changes in delivery points; (5) storage services; (6) increases in storage capacity; (7) underground storage testing and development; (8) abandonment; (9) changes in rate schedules; and (10) changes in customer name. Great Lakes states that it has no outstanding budget-type certificates. Great Lakes states that it would comply with the terms, conditions, and procedures specified in Subpart F of Part 157 of the Commission's Regulations.

Comment Date: September 20, 1990, in accordance wtih Standard Paragraph F at the end of this notice.

5. ANR Pipeline Co.

[Docket Nos. CP90–2080–000 and CP90–2081–000]

Take notice that ANR Pipeline Company, 500 Renaissance Center, Detroit, Michigan 48243, (Applicant), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88–532–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: October 15, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name	Peak day,verage day,annual Dth	Receipt points [1]	[1] Delivery points	Contract date rate schedule service type	Related docket, start up date
CP90–2080–000 (8–28–90)	S.C. Johnson Wax	700 700 255,500	OLA, LA	WI	FTS–1, Firm	ST90–4068–000, 7–1–90.
CP90–2080–001 (8–28–90)	Arco Natural Gas Marketing.	100,000 100,000 36,500,000	TX, OK, KS	OK	ITS, Interruptible	ST90–4068–000, 7–1–90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

6. ANR Pipeline Co.

[Docket Nos. CP90–2072–000 [2], CP90–2073–000, CP90–2074–000, CP90–2075–000, and CP90–2076–000]

Take notice that on August 27, 1990, ANR Pipeline Company (ANR), 500 Rennaissance Center, Detroit, Michigan 48243 filed in the above referenced dockets prior notice requests pursuant to §§ 157.205 and 248.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under ANR's blanket certificate issued in Docket No. CP88–532–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 248.223 of the Commission's Regulations, has been provided by ANR and is included in the attached appendix.

ANR also states that it would provide the service for each shipper under an executed transportaion agreement, and that ANR would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: October 15, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket number	Shipper name	Peak day [1] average annual	Receipt	Points of delivery	Start up date rate schedule	Related dockets
CP90–2072–000	Coastal Gas Marketing Co.	800,000 800,000 292,000,000	LA, TX, OK, KS, Off LA Off TX	WI, MI, IA, IN	7/1/90, ITS	ST90–4096–000.
CP90–2073–000	Wintershall Energy	25,000 25,000 9,125,000	LA	MI, IL, OH, KY, IN	7/1/90, ITS	ST90–4071–000.
CP90–2074–000	Coastal Gas Marketing Co..	50,000 50,000 18,250,000	Off LA	Off LA	7/1/90, ITS	ST90–4101–000.
CP90–2075–000	Coastal Gas Marketing Co.	500,000 500,000 182,000,000	WI, MI	WI, OH, MI, LA, MO, TX, IA, OK, IL, KS, IN, WY, TN, KY.	7/1/90, ITS	ST90–4095–000.
CP90–2076–000	Citizens Gas Supply Corp.	100,000 100,000 36,500,000	LA, KS, OK, TX, Off LA, Off TX.	IL, TN, MO, KS, IN, WI, IA.	6/30/90, ITS	ST90–4075–000.

[1] Quantities are shown in dekatherms unless othewise indicated.

7. Northwest Pipeline Corp.

[Docket No. CP89-1525-001]

Take notice that on August 21, 1990, Northwest Pipeline Corporation (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84158, filed pursuant to section 7(c) of the Natural Gas Act (NGA) an amendment to its application in Docket No. CP89-1525-000, seeking a certificate of public convenience and necessity authorizing the construction of certain pipeline facilities, and the implementation of expanded storage services, all as described therein.

Specifically, Northwest has filed an amendment to its previous application in which it proposed to expand its SGS-1 and SGS-2 storage services which utilize the Jackson Prairie storage field. The proposed changes include the following.

(1) In its amendment, Northwest has filed to reflect the decision to install only four 12-inch turbine meters, instead of six, and to combine the injection and withdrawal functions by making the metering bi-directional. In addition, Northwest now intends to reuse both of the existing taps, instead of replacing the 12-inch tap on its mainline with a 24-inch tap. Northwest also proposes that the new meter station would have a MAOP of 1,000 psia instead of 809 psia. The new cost estimate for the meter station is $1,622,000.

(2) Consistent with the orders in Docket No. CP-88-651-000 Northwest's proposal herein to provide additional open-access storage service should be construed to provide for both SGS-2F (firm) and SGS-21 (interruptible) service.

(3) Northwest has replaced the pro forma SGS-2 tariff sheets included in Exhibit P, Tab 1 of the application with a Revised Exhibit P, Tab 1 which includes pro forma SGS-2F tariff sheets modified to provide for demand charge and capacity charge credits when SGS-2F service is provided from Washington Natural Gas Company's (WNG) or Washington Water Power Company's (WWP) owned capacity.

(4) Northwest's request for authority to utilize available Jackson Prairie capacity on an interruptible basis for system supply is clarified to recognize that Northwest would utilize on an interruptible basis for system supply only unused SGS-1 capacity, not the unused SGS-2F capacity.

(5) Northwest withdraws its request to provide SGS-2 service for Cascade Natural Gas (CNG). WWP has agreed to release to CNG 150,000 therms of firm daily deliverability, 55,328 therms of best-efforts daily deliverability and 4,800,000 therms of seasonal capacity from WWP's existing storage capacity at Jackson Prairie. The expanded capacity for Jackson Prairie proposed in CP89-1525-000 would not be utilized to serve CNG. The service to CNG would be provided under the SGS-1 rate schedule.

(6) Northwest withdraws its request to provide modified SGS-1 service to Paiute Pipeline Company (Paiute) since Paiute has decided not to execute a new SGS-1 service agreement.

Comment date: September 20, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without futher notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-21318 Filed 9-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-48-000]

ANR Pipeline Co.; Proposed changes in FERC Gas Tariff

September 5, 1990.

Take notice that ANR Pipeline Company ("ANR") on August 31, 1990 tendered for filing as part of its FERC Gas Tariff Original Volume No. 1, six copies of the tariff sheets, Thirtieth Revised Sheet No. 18 and Alternate Thirtieth Revised Sheet No. 18, to be effective October 1, 1990.

ANR states that the above referenced tariff sheets are being filed to adjust its Annual Charge Adjustment (ACA) rate as permitted by Section 17 of its Volume No. 1 Tariff. Thirtieth Revised Sheet No. 18 reflects an ACA rate of $.0022 per dth, while Alternate Thirtieth Revised Sheet No. 18 reflects an ACA rate of $.0019 per dth.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any party wishing to

become a party to the proceeding must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-21319 Filed 9-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-61-000]

Bayou Interstate Pipeline system; Proposed Change in FERC GasTariff

September 5, 1990.

Take notice that on August 31, 1990, Bayou Interstate Pipeline System (Bayou) tendered for filing Eighteenth Revised Sheet No. 4 to be a part of its FERC Gas Tariff.

Bayou States that the proposed tariff sheet provides a revised Annual Changes Adjustment (ACA) that the Federal Energy Regulatory Commission ("Commission") assesses Bayou under § 382.103 of the Commission's Regulations

Bayou States that a copy of this filing was mailed to Bayou's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard on the protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before September 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-21320 Filed 9-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-88-000]

Black Marlin Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 5, 1990.

Take notice that on August 31, 1990, Black Marlin Pipeline Company (Black Marlin) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheet to be effective October 1, 1990:

Primary Tariff Sheet

Third Revised Sheet No. 4

Reason for Filing

Black Marlin states that the above-referenced tariff sheets is being filed to reflect an ACA charge of .22¢/MMBtu based on the Commission's Annual Charge Billing for Fiscal Year 1990. Such unit charge differs from the unit charge determined by the Commission for the reasons set forth in the "Motion of Interstate Natural Gas Association of America and Indicated Pipelines for Clarification or Modification" filed August 30, 1990 in Docket No. RM87-3-000, to which Black Marlin is a party.

In the event the Commission does not accept the above tariff sheet for filing, Black Marlin is submitting the following alternate tariff sheet:

Alternate Tariff Sheet

Alternate Third Revised Sheet No. 4

The above alternate tariff sheet reflects the ACA Surcharge of .19¢/MMBtu as determined by the Commission on July 19, 1990 and does not include amounts related to adjustments for the prior year.

Black Marlin states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inpsection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-21321 Filed 9-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-67-000]

Canyon Creek Compression Co.; Proposed Change in FERC Gas Tariff

September 5, 1990

Take notice that on August 31, 1990, Canyon Creek Compression Company (Canyon) tendered for filing Eleventh Revised Sheet No. 4 (Original volume No. 1) and Second Revised Sheet No. 5 (Original Volume No. 1A) to be a part of its FERC Gas Tariff, to be effective October 1, 1990.

Canyon states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Canyon to recover from its customers annual charges assessed it by the Commission pursuant to part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1990 is .19¢ per Mcf.

Canyon requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective October 1, 1990.

Canyon states that a copy of the filing is being mailed to Canyon's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-21322 Filed 9-11-90; 8:45am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 5, 1990.

Take notice that Carnegie Natural Gas Company ("Carnegie") on August 31, 1990, tendered for filing the following revised tariff sheets in its FERC Gas Tariff, Second Revised Volume No. 1:

Tenth Revised Sheet No. 8
Tenth Revised Sheet No. 9
First Revised Sheet No. 10
First Revised Sheet No. 23

The proposed effective date of these revised tariff sheets is October 1, 1990.

Carnegie states that it is amending its sales and transportation rate schedules to reflect its Commission-authorized

Annual Charge Adjustment ("ACA") unit charge of $.0019 per Mcf. Carnegie states that this filing is submitted in compliance with § 154.38(d)(6) of the Commission's Regulations and section 24 of the General Terms and Conditions of Carnegie's FERC Gas Tariff, Second Revised Volume No. 1.

Carnegie states that copies of the filing were served upon Carnegie's jurisdictional customers and the applicable state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 90-21323 Filed 9-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-166-000]

Colorado Interstate Gas Co.; Petition for Waiver

September 5, 1990.

On August 20, 1990, Colorado Interstate Gas Company ("CIG") filed a Petition for Waiver for 18 CFR 154.305(b)(1) of the Commission's Regulations in CIG's annual purchased gas adjustment ("PGA") in Docket No. TA91-1-32.

CIG requests permanent waiver of 154.305(b)(1) of the Commission's Regulations to permit CIG to recover producer-related purchase gas cost expense from its jurisdictional gas sales customers on an "as billed" demand/commodity basis effective October 1, 1990.

CIG states that copies of this Petition have been served on CIG's jurisdictional customers and public bodies, and the filing is available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before September 21, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-21325 Filed 9-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 5, 1990.

Take notice that on August 31, 1990, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets to be effective October 1, 1990:

Primary Tariff Sheets

FERC Gas Tariff, Second Revised Volume No. 1

Fourth Revised Sheet No. 8
First Revised Sheet No. 8A
First Revised Sheet No. 8B

FERC Gas Tariff, Original Volume No. 3

Second Revised Sheet No. 1039

Reason for Filing

FGT states that the above-referenced tariff sheets are being filed to reflect an ACA charge of .21¢/MMBtu (.021¢/therm) based on the Commission's Annual Charge Billing for Fiscal Year 1990. Such unit charge differs from the unit charge determined by the Commission for the reasons set forth in the "Motion of Interstate Natural Gas Association of America and Indicated Pipelines for Clarification or Modification" filed August 30, 1990 in Docket No. RM87-3-000, to which FGT is a party.

In the event the Commission does not accept the above tariff sheets for filing, FGT is submitting the following alternate tariff sheets:

Alternate Tariff Sheets

FERC Gas Tariff, Second Revised Volume No. 1

Alternate Fourth Revised Sheet No. 8
Alternate First Revised Sheet No. 8A
Alternate First Revised Sheet No. 8B

FERC Gas Tariff, Original Volume No. 3

Alternate Second Revised Sheet No. 1039

The above alternate tariff sheets reflect the ACA Surcharge of .19¢/MMBtu as determined by the Commission on July 19, 1990 and do not include amounts related to adjustments for the prior year.

FGT states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-21326 Filed 9-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-77-000]

High Island Offshore System; Proposed Changes in FERC Gas Tariff

September 5, 1990.

Take notice that on August 31, 1990 High Island Offshore System (HIOS) tendered for filing pursuant to section 5 of the Schedule of Rates and Charges of its FERC Gas Tariff, First Revised Volume No. 1, and as permitted by § 154.38(d)(6) of the Commission's Regulations, Second Revised Sheet No. 8 and Alternate Second Revised Sheet No. 8, to its FERC Gas Tariff, First Revised Volume No. 1 with the effective date being October 1, 1990.

HIOS states that the above referenced tariff sheets are being filed to adjust its Annual Charge Adjustment (ACA) rate.

Second Revised Sheet No. 8 reflects an ACA rate of $.0022 per Mcf, while Alternate Second Revised Sheet No. 8 reflects an ACA rate of $.0019 per Mcf. HIOS states further than the authorized rate of $.0019 per Mcf does not take into account the additional charge being assessed to the pipelines for the underrecovery of the ACA program cost for the fiscal year 1989, whereas the proposed rate of $.0022 per Mcf does.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-21327 Filed 9-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-65-000]

Jupiter Energy Corp.; Proposed Changes in FERC Gas Tariff

September 5, 1990.

Take notice that Jupiter Energy Corporation ("Jupiter Energy" or the "Company") on August 31, 1990 tendered for filing the following sheets of its FERC Gas Tariff, Original Volume No. 1.

Third Revised Sheet No. 4A
Third Revised Sheet No. 5A
Third Revised Sheet No. 6A

Jupiter Energy states that the filed tariff sheets reflect revision, pursuant to § 154.38(d)(6) of the Commission's regulations, of Jupiter Energy's Annual Charge Adjustment surcharge to recover during the Commission's upcoming fiscal year the $27,598 Jupiter Energy payment of the Commission's annual charges billing. The new ACA surcharge rate is 0.19¢ per Mcf.

Jupiter Energy proposes an effective date of October 1, 1990.

Jupiter Energy states that copies of the filing have been served on the Company's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Jupiter Energy's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-21328 File 9-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-53-000]

K N Energy, Inc.; Tariff Filing

September 5, 1990.

On August 31, 1990, K N Energy, Inc. ("K N") tendered for filing the following revised tariff sheets:

Third Revised Volume No. 1

Forty-Ninth Revised Sheet No. 4
Twenty-Seventh Revised Sheet No. 4B

Original Volume No. 1-A

Third Revised Sheet No. 4

K N states that these tariff sheets reflect the Commission's revised Annual Charge Adjustment (ACA) unit charge and requests that the tariff sheets be made effective on October 1, 1990.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 918 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 90-21329 Filed 9-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ91-1-16-000 and TM91-1-16-000]

National Fuel Gas Supply Corp., Proposed Changes in FERC Gas Tariff

September 5, 1990.

Take notice that on August 31, 1990, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, the following tariff sheets to become effective October 1, 1990:

First Revised Volume No. 1

Item A: Thirty-Sixth Revised Sheet No. 4
Item B: Sixth Revised Sheet No. 68

First Revised Volume No. 2

Item C: Substitute Original Sheet No. 796
First Revised Sheet No. 857

National states the purpose of the revisions in Item A is to reflect PGA current rate adjustments pursuant to section 17 of the General Terms and Conditions of National's FERC Gas Tariff, First Revised Volume No. 1. The tariff reflects a commodity current adjustment of 6.24 cents per Dth, from National's July alternate quarterly purchased gas cost adjustment, filed on May 31, 1990, in Docket No. TQ90-3-16-000, an average commodity cost of purchased gas of $2.7576 and an RQ and CD sales commodity rate of $2.9588 per Dth.

National states the purpose of the revisions in Item B is to amend Section 19.1 of the General Terms and Conditions of National's FERC Gas Tariff, First Revised Volume No. 1 (ACA Clause), pursuant to 18 CFR 154.38(d)(6) to include reference to Rate Schedules X-54 and X-57. The effective change results in an increase of $.0002 to $.0018/Dth.

National states that the purpose of the revisions in Item C is filed in compliance with Docket No. CP88-194 to make revisions to Rate Schedules X-54 and X-57.

National further states that copies of this filing were served on National's jurisdictional customers and on the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to

intervene or protests should be filed on or before September 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21330 Filed 9–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–1–26–000]

Natural Gas Pipeline Co. of America; Proposed Changes in FERC Gas Tariff

September 5, 1990.

Take notice that on August 31, 1990, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, revised tariff sheets to be effective October 1, 1990.

Natural states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Natural to recover from its customers annual charges assessed it by the Commission pursuant to part 382 of the Commission's Regulatons. The rate authorized by the Commission to be effective October 1, 1990 is .19¢ per Mcf. Under Natural's billing basis of 14.65 psia at 1000 Btu, this rate converts to .18¢ per Mcf.

Natural requested waiver of the Commission's Regulations, to the extent necessary to permit the tariff sheets to become effective on October 1, 1990.

Natural states that a copy of the filing is being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21331 Filed 9–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–1–27–000]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

September 5, 1990.

Take notice that North Penn Gas Company (North Penn) on August 31, 1990 tendered for filing One Hundredth Revised Sheet No. PGA–1 to its FERC Gas Tariff First Revised Volume No. 1.

North Penn states that the filed tariff sheet reflects revision, pursuant to § 154.38(d)(6) of the Commission's regulations, of North Penn's Annual Charge Adjustment (ACA) surcharge to recover the Commission's annual charges billing. The new ACA surcharge rate is $0.0019 per Mcf.

North Penn proposes an effective date of October 1, 1990.

North Penn states that copies of the filing have been served on the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21332 Filed 9–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–145–001]

Northern Border Pipeline Co.; Compliance Tariff Filing

September 5, 1990.

Take notice that on August 29, 1990, Norther Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet:

Substitute Ninth Revised Sheet Number 157

The purpose of this tariff filing is to revise the Maximum Rate of Rate Schedule IT–1 to be in compliance with the Commission's Order dated August 15, 1990 in Docket No. RP90–145–000.

Northern Border has requested that this revised tariff sheet be effective July 1, 1990. Northern Border states that copies of this filing have been sent to all parties of record in this proceeding and all of Northern Border's contracted Shippers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 12, 1990. Protests will be considered but do not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 90–21333 Filed 9–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA91–1–41–000]

Paiute Pipeline Co.; Annual Change in Rates Pursuant to Purchased Gas Cost Adjustment Provision

September 5, 1990.

Take notice that on August 31, 1990, Paiute Pipeline Company (Paiute) tendered for filing its annual purchased gas cost adjustment (PGA) filing pursuant to the PGA provisions contained in section 9 of the General Terms and Conditions of Paiute's FERC Gas Tariff, Original Volume No. 1. Paiute has requested that its proposed tariff sheet, Sixteenth Revised Sheet No. 10, become effective November 1, 1990.

Paiute states that its annual PGA filing reflects (1) an increase of 35.41 cents per dekatherm in the commodity rate; and (2) an annual surcharge rate of (18.98) cents per dekatherm. Paiute further states that its proposed rates are based on estimated levels of purchases and sales for the period that the proposed rates are to be in effect, which is the three-month period ending January 31, 1991.

Pauite states that copies of this filing have been mailed to all jurisdictional sales customers of Pauite Pipeline Company's, interested parties and affected state regulatory agencies.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 25, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 90-21334 Filed 9-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-72-000]

Pelican Interstate Gas System; Proposed Change in FERC Gas Tariff

September 5, 1990.

Take notice that on August 31, 1990, Pelican Interstate Gas System (Pelican) tendered for filing Third Revised Sheet No. 2A and Second Revised Sheet No. 2B to be a part of its FERC Gas Tariff.

Pelican states that the proposed tariff sheet provides a revised Annual Charges Adjustment (ACA) that the Federal Energy Regulatory Commission ("Commission") assesses Pelican under § 382.103 of the Commission's Regulations.

Pelican states that copy of this filing was mailed to Pelican's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before September 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-21335 Filed 9-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-6-000]

Sea Robin Pipeline Co.; Filing of Revised Tariff Sheets

September 5, 1990

Take notice that on August 31, 1990, Sea Robin Pipeline Company (Sea Robin) tendered for filing the following tariff sheets to be effective October 1, 1990:

Original Volume No. 1

Thirty-Third Revised Sheet No. 4-A
Tenth Revised Sheet No. 4-A1
Ninth Revised Sheet No. 4-A2

Sea Robin states that these tariff sheets reflect an upward revision to the unit rate of the Annual Charge Adjustment (ACA) Clause to be generally applied to interstate natural gas pipeline rates for the recovery of the 1990 Annual Charges, pursuant to Order No. 472.

Sea Robin also states that this revision authorizes Sea Robin to collect 0.19¢ per each jurisdictional Mcf of natural gas sold or transported applicable to the 1990 Annual Charge assessed Sea Robin by the Commission under part 382 of the Commission's Regulation.

Sea Robin also states that the tariff sheets are being mailed to its jurisdictional customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before September 12, 1990.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-21336 Filed 9-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-1-8-000 and TM91-1-8-000]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

September 5, 1990

Take notice that on August 31, 1990, South Georgia Natural Gas Company (South Georgia) tendered for filing Sixty-Fifth Revised Sheet No. 4 and Sixth Revised Sheet No. 34A to its FERC Gas Tariff, First Revised Volume No. 1. These tariff sheets are being filed with a proposed effective date of October 1, 1990 pursuant to the Purchased Gas Cost Adjustments (PGA) provision set out in section 14 of South Georgia's FERC Gas Tariff.

South Georgia states that Sixty-Fifth Revised Sheet No. 4 reflects a revised Current Adjustment computed in accordance with § 54.305(c) of the Federal Energy Regulatory Commission's (Commission) Regulations. The Current Adjustment, which is proposed to be in effect from October 1, 1990 through December 31, 1990, reflects an increase in jurisdictional revenues of approximately $879,000 which is attributable to an increase in the demand component of $.637 per Mcf and an increase in the commodity component of $.637 per MMBtu from South Georgia's annual PGA filing in Docket No. TA90-1-8-000.

South Georgia states that copies of the filing will be served upon all of South Georgia's jurisdictional purchasers, state commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a notice to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (sections 385.211 and 385.214). All such motions or protests should be filed on or before September 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Assistant Secretary.

[FR Doc. 90-21337 Filed 9-17-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-1-7-000 and TM91-1-7-000]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

September 5, 1990.

Take notice that on August 31, 1990, Southern Natural Gas Company (Southern) tendered for filing the following revised sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1:

Ninety-ninth Revised Sheet No. 4A
Eighteenth Revised Sheet No. 4J
Substitute Sixth Revised Sheet No. 45M

The proposed tariff sheets and supporting information are being filed with a proposed effective date of October 1, 1990. The aforesaid tariff sheets reflect an increase of 6.6¢ per Mcf. in the commodity component of Southern's rates to conform to projected changes in its commodity cost of purchased gas. The D-1 and D-2 demand components of Southern's rates have also been adjusted to reflect reductions in those charges from Southern's pipeline suppliers.

Southern states that copies of Southern's filing were served upon all of Southern's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (sections 385.214, 385.211). All such petitions or protests should be filed on or before September 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 90-21338 Filed 9-11-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM91-1-69-000]

Stingray Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 5, 1990.

Take notice that on August 31, 1990, Stingray Pipeline Company (Stingray) tendered for filing Eighteenth Revised Sheet No. 4 to be a part of its FERC Gas Tariff, Original Volume No. 1, to be effective October 1, 1990.

Stingray states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Stingray to recover from its customers annual charges assessed it by the Commission pursuant to part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1990 is 19¢ per Mcf. Under Stingray's billing basis of 14.73 psia per Dekatherm, this rate converts to 18¢ per Dekatherm.

Stingray requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective on October 1, 1990.

Stingray states that a copy of the filing is being mailed to Stingray's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary

[FR Doc. 90-21339 Filed 9-11-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM91-1-18-000, RP90-183-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 5, 1990.

Take notice that on August 31, 1990, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, and FERC Gas Tariff, Original Volume No. 2-A:

Primary Tariff Sheets Submitted

FERC Gas Tariff, Original Volume No. 1

Fourth Revised Twenty-eighth Revised Sheet No. 10
Fourth Revised Twenty-eighth Revised Sheet No. 10A
Second Revised Ninth Revised Sheet No. 11
Second Revised Original Sheet No. 11A
Second Revised Original Sheet No. 11B
Fourth Revised Sheet No. 116

FERC Gas Tariff, Original Volume No. 2-A

Fourth Revised Sheet No. 10A
Third Revised Third Revised Sheet No. 11
First Revised Sheet No. 97

Alternate Tariff Sheets Submitted

FERC Gas Tariff, Original Volume No. 1

Alternate Fourth Revised Twenty-eighth Revised Sheet No. 10
Alternate Fourth Revised Twenty-eighth Revised Sheet No. 10A
Alternate Second Revised Ninth Revised Sheet No. 11
Alternate Second Revised Original Sheet No. 11A
Alternate Second Revised Original Sheet No. 11B

FERC Gas Tariff, Original Volume No. 2-A

Alternate Fourth Revised Sheet No. 10A
Alternate Third Revised Third Revised Sheet No. 11

Texas Gas states the revised tariff sheets are being filed pursuant to section 25 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, Original Volume No. 1, and section 21 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, Original Volume No. 2-A, which affords Texas Gas the right to recover the costs billed to Texas Gas by the Federal Energy Regulatory Commission via the FERC ACA Unit Charge method. Additionally, Texas Gas is proposing to revise its tariff to provide for adjustment to the FERC ACA Unit Charge Factor for any over or under recoveries which are included in Texas Gas's Annual Charges Bill from the previous fiscal year. The FERC ACA Unit Charge, as authorized by the Commission for fiscal year 1990 is $.0019 per Mcf, $.0018 per MMBtu converted to Texas Gas's pressure base and heating value. The FERC ACA Unit Charge as adjusted to give effect to the fiscal year 1989 adjustment is $.0022 per Mcf, $.0021 per MMBtu converted to Texas Gas's pressure base and hearing value.

Should the Commission reject all of Texas Gas's primary sheets filed herein, Texas Gas is also submitting the aforementioned alternate tariff sheets, which are in accordance with Texas Gas's tariffs as they presently exist.

Texas gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214

and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21340 Filed 9–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–1–68–000]

Trailblazer Pipeline Co.; Proposed Change in FERC Gas Tariff

September 5, 1990.

Take notice that on August 31, 1990, Trailblazer Pipeline Company (Trailblazer) tendered for filing Ninth Revised Sheet No. 4 (Original Volume (No. 1) and First Revised Sheet No. 4 (Original Volume No. 1A) to be a part of its FERC Gas Tariff, to be effective October 1, 1990.

Trailblazer states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Trailblazer to recover from its customers annual charges assessed it by the Commission pursuant to Part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1990 is .19¢ per Mcf.

Trailblazer requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective October 1, 1990.

Trailblazer states that a copy of the filing is being mailed to Trailblazer's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21341 Filed 9–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–1–11–000]

United Gas Pipe Line Co., Filing of Revised Tariff Sheets

September 5, 1990.

Take notice that on August 31, 1990, United Gas Pipe Line Company (United) tendered for filing the following tariff sheets to be effective October 1, 1990:

Second Revised Volume No. 1

Sixth Revised Sheet No. 4
Sixth Revised Sheet No. 4–A
Sixth Revised Sheet No. 4–B
Second Revised Sheet No. 4–E
Second Revised Sheet No. 4–F
Third Revised Sheet No. 4–H
Sixth Revised Sheet No. 4–I

United states that these tariff sheets reflect an upward revision to the unit rate of the Annual Charge Adjustment (ACA) Clause to be generally applied to interstate natural gas pipeline rates for the recovery of the 1990 Annual Charges, pursuant to Order No. 472.

United also states that this revision authorizes United to collect 0.19¢ per each jurisdictional Mcf of natural gas sold or transported applicable to the 1990 Annual Charge assessed United by the Commission under part 382 of the Commission's Regulation.

United also states that the tariff sheets are being mailed to its jurisdictional customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before September 12, 1990.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21344 Filed 9–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–1–56–000]

Valero Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff

September 5, 1990.

Take notice that Valero Interstate Transmission Company ("Vitco"), on August 31, 1990 tendered for filing the following tariff sheets containing changes to the ACA unit rate in each applicable rate schedule:

FERC Gas Tariff, Original Volume No. 1

19th Revised Sheet No. 14
20th Revised Sheet No. 14.2
4th Revised Sheet No. 21.12
3rd Revised Sheet No. 29.9

FERC Gas Tariff, Original Volume No. 2

25th Revised Sheet No. 6
4th Revised Sheet No. 7
3rd Revised Sheet No. 12.50

The proposed effective date of the above filing is October 1, 1990. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by October 1, 1990.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 12, 1990. Protests will be considered by the Commission in determining the appropriate acton to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21342 Filed 9–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA91–1–82–000]

Viking Gas Transmission Co.; Rate Filing Pursuant To Tariff Rate Adjustment Provisions

September 5, 1990.

Take notice that on August 31, 1990, Viking Gas Transmission Company (Viking) filed the following revised tariff

sheets to Original Volume No. 1 of its FERC Gas Tariff:

To be effective October 1, 1990:

Alternate Eighth Revised Sheet No. 6

To be effective November 1, 1990:

Ninth Revised Sheet No. 6

Viking states that the purpose of the revisions on Ninth Revised Sheet No. 6 is to institute the Annual PGA pursuant to Article XVII of the General Terms and Conditions of Viking's Tariff. Alternate Eighth Revised Sheet No. 6 is being filed to reflect a new Annual Charge Adjustment under Viking's current rates.

Viking states that the Current Purchased Gas Cost Rate Adjustments reflected on Ninth Revised Sheet No. 6 consist of a $.3451 per dekatherm adjustment to the gas rate, a $.0436 per dekatherm adjustment to Rate Schedule SR–1, and a $.53 per dekatherm adjustment applicable to the D1 component of the demand rates.

Viking states that the revisions also reflect a $(.1411) per dekatherm surcharge adjustment to the gas rates and a $1.13 per dekatherm surcharge adjustment to the demand D1 for amortizing the Unrecovered Gas Cost Account.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 25, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–21343 Filed 9–11–90; 8:45 am]

BILLING CODE 6717–01–M

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products; Application for Interim Waiver and Petition for Waiver of Furnace Test Procedures from Rheem Manufacturing Company (F–025)

AGENCY: Conservation and Renewable Energy Office, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Rheem Manufacturing Company (Rheem) from the existing Department of Energy (DEO) test procedures for furnaces regarding blower time delay for the company's GEC(—) upflow models and GKB(—) downflow models of condensing gas furnaces.

Today's notice also publishes a "Petition for Waiver" from Rheem. Rheem's Petition for Waiver requests DOE to grant relief from the DOE test procedures relating to the blower time delay specification. Rheem seeks to test using a blower delay time of 30 seconds for GEC(—) and GKB(—) condensing gas furnaces instead of the specified 1.5 minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than October 12, 1990.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F–025, Mail Stop CE–43, Forrestal Building, 1000 Independent Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station, CE–43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station, GC–12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION:

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a compatible measure of energy consumption that will assist consumers in making purchasing decisions. The test procedures appear at 10 CFR part 430, subpart B.

DOE has amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. DOE further amended its appliance test procedure waiver to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 43823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The interim waiver provisons, added by the 1986 amendment, allow the Assistant Secretary to grant an interim waiver when it is determined that the applicant will experience hardship if the Application for Interim Waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. An interim Waiver remains in effect for a period of 180 days or until DOE issues its determination, and may be extended for an additional 180 days if necessary.

On June 1, 1990, Rheem filed an Application for an Interim Waiver regarding blower time delay. Rheem's Application seeks an interim waiver

from the DOE test provisions that require a 1.5 minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Rheem requests the allowance to test using a 30 second blower time delay when testing is GEC(−) and GKB(−) condensing gas furnaces. Rheem states that the 30 second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 2.0 percent. Since current DOE test procedures do not address this variable blower time delay, Rheem asks that the interim waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by the Department to the Coleman Company, 50 FR 2710, January 18, 1985, Magic Chef Company, 50 FR 41553, October 11, 1985, Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, and 55 FR 3253, January 31, 1990, Trane Company, 54 FR 19226, May 4, 1989, DMO Industries, 55 FR 4004, February 6, 1990, Heil-Quaker Corporation, 55 FR 13184, April 9, 1990, and Carrier Corporation, 55 FR 13182, April 9, 1990. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success for the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Rheem an Interim Waiver for its GEC(−) upflow models and GKB(−) downflow model of condensing gas furnaces.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

In addition, pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations, the following letter granting the Application for Interim Waiver was issued to Rheem Manufacturing Company.

Issued in Washington, DC., September 4, 1990.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

September 4, 1990.

Mr. Daniel J. Canclini, Vice President, *Product Development and Research Engineering, 5600 Old Greenwood Road, P.O. Box 6444, Fort Smith, AR 72906–0444*

Dear Mr. Canclini: This is in response to your June 1, 1990, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedures for furnaces when testing Rheem Manufacturing Company GEC(−) and GKB(−) condensing gas furnaces regarding blower time delay.

Pursuant to the Energy Policy and Conservation Act, as amended, DOE has prescribed test procedures to measure the energy consumption of certain major household appliances, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear in the Code of Federal Regulations at 10 CFR part 430, subpart B.

DOE amended the test procedure regulations on September 26, 1980 [45 FR 64108] and November 26, 1986 [51 FR 42823], by adding paragraph 430.27. These provisions allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures or may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inadequate comparative data. The 1986 amendments added provisions allowing the Assistant Secretary to grant an interim waiver for a particular basic model when a petitioner demonstrates the likely success of the petition for waiver, it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver.

Previous waivers for timed blower delay control have been granted to the Coleman Company, 50 FR 2710, January 18, 1985, Magic Chef Company, 50 FR 41553, October 11, 1985, Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, and 55 FR 3253, January 31, 1990, the Trane Company, 54 FR 19226, May 4, 1989, DMO Industries, 55 FR 4004, February 6, 1990, Heil-Quaker Corporation, 55 FR 13184, April 9, 1990, and Carrier Corporation, 55 FR 13182, April 9, 1990.

Rheem's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Rheem will likely experience absent a favorable determination on the application for interim waiver. However, the Department finds that it would be desirable for public policy reasons to grant Rheem's Application for Interim Waiver. Specifically, in those instances where the likely success of the petition for waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public's interest to have the similar products tested and rated for energy consumption on a comparable basis.

Therefore, Rheem's Application for an Interim Waiver requesting an interim waiver from the DOE test procedures for its GEC(−) and GKB(−) series condensing gas furnaces regarding blower time delay is granted.

Rheem shall be permitted to test its line of GEC(−) and GKB(−) condensing gas furnaces on the basis of the test procedures specified in 10 CFR part 430, with the modification set forth below.

(i) Section 9.3.1 of ANASI/ASHRAE Standard 103–1982 is deleted and replaced with the following paragraph:

Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) come on. After the burner start-up, delay the blower start-up by 1.5 minutes (t−), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower, or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t−), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe with ±0.01 inch of water gauge of the manufacturers recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner. If DOE has not acted by the expiration of that period, it will exercise its statutory authority to extend the Interim Waiver for an additional 180-day period.

Sincerely,

J. Michael Davis, P.E.,

Assistant Secretary, Conservation and Renewable Energy.

Rheem Manufacturing Company, Air Conditioning Division, 5600 Old Greenwood Road, P.O. Box 6444, Fort Smith, AR 72906–9444

June 1, 1990.

Assistant Secretary, Conservation and Renewable Energy

United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 29585.

Gentlemen: This is a petition for waiver and petition for interim waiver submitted pursuant to title 10 CFR part 430.27. Waiver is requested from the furnace test procedure found at appendix N to subpart B of part 430.

The test procedure requires a 1.5 minute delay between burner on and blower on. Rheem is requesting authorization to use a 30 second delay instead of 1.5 minutes. Rheem will be manufacturing a series of condensing furnaces which include the (−)GEC upflow models and (−)GKB downflow models with an electronic control that actuates and terminates the blower operation on a timing sequence as opposed to temperature. Maximum energy efficiency is achieved by the fixed timing controls installed in these models that activate the circulating air blower 30 seconds after the burner is on. Under the appendix N procedures, the stack temperature is allowed to climb at a faster rate than it would with a 30 second blower on time, allowing energy to be lost out the vent system. This waste of energy would not occur in actual operation. If this petition is granted, the true blower on time delay would be used in the calculations. Proposed ASHRAE Standard 103–1982R of 9/25/87 paragraph 9.5.1.2.2 specifically addresses the use of timed blower operation.

The current test procedures do not give Rheem credit for the energy savings which averages approximately 2%. This improvement is an average reduction of 20% of the energy loss. Rheem is of the opinion that a 20% reduction is a worthwhile energy savings.

Current prescribed test procedures prohibit Rheem from taking credit for the saved energy, thus providing inaccurate comparative data.

Rheem has been granted a waiver permitting the 30 second blower on time to be used in the efficiency calculations of our (−)GEB and (−)GKA series condensing furnaces. Several other manufacturers of condensing furnaces have also been granted a waiver to permit calculations based on timed blower operation.

Confidential comparative test data is available to you upon your request, confirming the above energy savings.

Manufacturers that domestically market similar products are being sent a copy of this petition for waiver and petition for interim waiver.

Sincerely,

Daniel J. Canclini,

Vice-President, Product Development and Research Engineering.

[FR Doc. 90–21407 Filed 9–11–90; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[Docket Nos. PP–48–3 and PP–48A–2]

Application by El Paso Electric Co. for Amendment of Presidential Permit and Amendment of Authorization to Transmit Electric Energy to Mexico

AGENCY: Fossil Energy, Department of Energy.

ACTION: Notice of application by El Paso Electric Company for amendment of a Presidential permit in Docket No. PP–48–3 and amendment of export authorization in Docket No. PP–48A–2.

SUMMARY: El Paso Electric Company (EPE) has applied to the Department of Energy (DOE) to amend the Presidential permit contained in Docket No. PP–48–3 and issued to EPE on May 21, 1946, to permit the conversion of an existing international transmission line from 69-kilovolts (kV) to 115–kV. EPE also has applied to the DOE to amend the electricity export authorization contained in Docket No. PP–48A–2 and issued on October 9, 1970, by eliminating the 450,000,000 kilowatt-hour (KWH) annual energy limit and increasing the maximum allowable transmission rate from 80,000 KW to 150,000 KW.

According to EPE, the requested amendments would allow the continued interconnection of existing EPE facilities with facilities owned and operated by the Comision Federal de Electricidad (DFE), the Mexican national utility.

Comments, protests, and petitions to intervene are invited.

FOR FURTHER INFORMATION CONTACT:

William H. Freeman, Office of Fuels Programs, Fossil Energy (FE–52), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5883

Lise Courtney M. Howe, Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2900.

SUPPLEMENTARY INFORMATION: On August 30, 1990, EPE applied to the DOE, pursuant to Executive Order 10485, as amended by Executive Order 12038, to amend the Presidential permit contained in Docket No. PP–48–3 which authorized the construction, connection, operation, and maintenance of a 69–kV transmission line at the international border between the U.S. and Mexico. On the aforementioned date, EPE also applied to the DOE, pursuant to section 202(e) of the Federal Power Act, to amend EPE's existing authorization to transmit electric energy to Mexico contained in Docket No. PP–48A–2.

In its application to amend the Presidential permit, EPE requested authority to coinvert the existing 69–kV international transmission line to 115–kV. EPE has indicated that this amendment is required because the EFE has indicated that this amendment is required because the CFE plans to convert its local 69–kV facilities to 115–kV operation and that EPE must effect a similar conversion of its international facilities in order to maintain its interconnection with CFR.

EPE's existing 69–kV facilities extend approximately 7100 feet from EPE's Ascarate Substation to the U.S.–Mexican border. Only about 2100 feet of these existing facilities would require any physical modification to affect the conversion. All construction would take place within the existing right-of-way and would include replacement of ten existing poles, installaiton of new insulators, the addition of six new poles, and the replacement of the existing conductors.

EPE's existing electricity export authorization allows EPE to export electric energy to Mexico in an amount not to exceed 450,000,000 KWH per year at a maximum transmission rate of 80,000 KW. EPE now requests that this export authorization be amended to delete the 450,000,000 KWH annual energy limitation and to allow an increase in the maximum transmision rate to 150,000 KW.

EPE's request for amendment of its export authorization is occasioned by a request from CFE to increase the amount of energy that EPE exports to the City of Juarez, Mexico, in order to allow more efficient planning and operation of the trans-border power supply system in the region.

By this notice, the DOE also is soliciting comments on the impact of the proposed actions on the reliability of the regional electric power supply system. Any person desiring to be heard or to protest this application to amend the existing Presidential permit and export authorization should file a petition to intervene or protest with the Office of Coal & Electricity, room 3H–087, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.2H).

Any such petitions and protests should be filed on or before October 12, 1990. Protest will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application will be made available, upon request, for public inspection and copying at the Department of Energy's Freedom of Information Room, room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC from 8 a.m. to 4 p.m., Monday through Friday.

Issued in Washington, DC on September 4, 1990.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 90-21359 Filed 9-11-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-62-NG]

Northridge Petroleum Marketing U.S., Inc.; Application To Export Natural Gas to Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application to extend blanket authorization to export natural gas to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 10, 1990, of an application filed by Northridge Petroleum Marketing U.S., Inc. (Northridge U.S.) to extend blanket authorization previously granted by the Economic Regulatory Administration (ERA) in DOE/ERA Opinion and Order No. 197 (Order 197), 1 ERA Para. 70,728 (October 20, 1987), to export from the United States to Canada up to 300 Bcf of natural gas for an additional two-year period beginning on September 21, 1990, the expiration date of the existing authorization. As a matter of procedural policy, the DOE is treating Northridge U.S.'s filing as an application for a new authorization to export volumes not to exceed 300 Bcf natural gas over a two-year period. Northridge U.S. intends to use existing pipeline facilities within the United States and at the international border for transportation of the exported natural gas. Northridge U.S. states that it will notify the DOE of the date of first delivery and submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., October 12, 1990.

ADDRESSES:

Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585

FOR FURTHER INFORMATION CONTACT:

Perry Bolger, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue, SW Washington, DC 20585, (202) 586-1789

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW Washington, DC 20585, (202) 586-6667

SUPPLEMENTARY INFORMATION:

Northridge U.S., a Colorado corporation with its principal place of business in Calgary, Alberta, Canada, proposes to export natural gas for its own account or as a broker or agent on behalf of U.S. and/or Canadian suppliers and/or foreign purchasers. Northridge U.S. is currently operating under Order 197 which authorized it to export up to 300 Bcf of natural gas from Canada over a two-year period which will end September 21, 1990. The natural gas will be supplied by various Canadian and U.S. suppliers, and will be sold on a short-term or spot-market basis to purchasers in Canada. Gas supplied by Canadian suppliers will be imported into the United States by Northridge U.S. using its import authorization granted in DOE/FE Opinion and Order No. 339, 1 FE Para. 70,250 (October 10, 1989), transported through U.S. territory, and then exported for delivery to the foreign purchaser. Northridge U.S. states that the contractual arrangements will be the product of arms-length negotiations and will be responsive to market conditions for natural gas.

In support of its application, Northridge U.S. states that the current natural gas surplus in the United States and the short-term nature of the requested export authority minimize any risk that a national or regional need for the subject gas will develop in the future. Northridge U.S. also states that its proposal will facilitate the reduction of the U.S. trade deficit and the U.S. surplus of gas. The applicant further states that the proposed arrangement will further the policy goals of reducing trade barriers and encouraging the use of market forces to achieve a more competitive and efficient distribution of the goods between the United States and Canada.

This export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this blanket export application is granted, the authorization may permit the export of natural gas at any point of exit on the international border where existing pipeline facilities are located and that a total term volume may be designated, rather than a daily or annual limit, in order to provide the applicant with maximum flexibility of operation.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires that DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written

comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Northridge U.S.'s application is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., e.d.t., Monday through Friday, except Federal holidays.

Issued in Washington, DC on September 6, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–21362 Filed 9–11–90; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Issuance of Proposed Decision and Order; Week of April 23 through April 27, 1990

During the week of April 23 through April 27, 1990, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Eenrgy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issuance of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: September 5, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

Gene Clark Operating Company, Inc., Denver, Colorado, Lee-0013 Reporting Requirements

Gene Clark Operating Company, Inc. filed an Application for Exception from the Energy Information Administration (EIA) reporting requirement. The exception request, if granted, would receive Clark of its requirements to file form EIA–23, "Annual Survey of Domestic Oil and Gas Reservers." On April 24, 1990, the Department of Energy issued a Proposed Decision and Order which determined that exception relief be denied.

[FR Doc. 90–21408 Filed 9–11–90; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Rate Order; Salt Lake City Area Integrated Projects

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of a rate order—Salt Lake City Area Integrated Projects firm power rate adjustment.

SUMMARY: Notice is given of the confirmation and approval by the Deputy Secretary of the Department of Energy (DOE) of Rate Order No. WAPA–45 and Rate Schedule SLIP–F2 placing an increased firm power rate for capacity and energy from the Salt Lake City Area Integrated Projects (Integrated Projects) of the Western Area Power Administration (Western) in effect on an interim basis.

The interim rate, hereinafter called the provisional rate, will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places it in effect on a final basis or until it is replaced by another rate.

The base provisional firm power rate to be effective from October 1, 1990, through September 30, 1995 consists of an energy charge of 6.50 mills/kWh and a capacity charge of $2.76/kW-month, which results in a combined rate of 13.00 mills/kWh. This is a 31-percent increase over the current energy charge of 5.0 mills/kWh and the current capacity charge of $2.09/kW-month or a combined rate of 9.92 mills/kWh, calculated at a 58.2-percent load factor

The total provisional rate (base amount plus adder component) to be effective October 1, 1990, through September 30, 1992, consists of an energy charge of 7.25 mills/kilowatthour (kWh) and a capacity charge of $3.08/kilowatt-month (kW-month) for a combined rate of 14.50 mills/kWh, calculated at a 58.2-percent load factor This is an increase of 46 percent. Included within these charges are components that must be collected to assure sufficient cash flow for the Integrated Projects. These adders consist of an energy charge of .75 mills/kWh and a capacity charge of $32/kW-month, for a combined adder of 1.5 mills/kWh.

Dates effective	Energy (mills/kWh)	Capacity ($/kW month)	Combined (mills/kWh)
10/1/90 through 9/30/92	7 25	3.08	14.50
10/1/92 through 9/30/95	6.50	2.76	13.00

Rate Order No. WAPA–45 explains the rate adjustment, discussed the principal factors leading to the decision to increase the rate, and responds to the comments offered by interested parties during the public consultation and comment period.

EFFECTIVE DATE: Rate Schedule SLIP–F2 will be effective October 1, 1990, through September 30, 1995.

FOR FURTHER INFORMATION CONTACT:

Mr. Lloyd Greiner, Area Manager, Salt Lake City, Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147, (801) 524–6372.

Mr. Robert C. Fullerton, Director, Division of Marketing and Rates, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231–1545.

Mr. Ronald K. Greenhalgh, Assistant Administrator for Washington Liaison, Western Area Power Administration, Forrestal Building, Room 8G061, 1000 Independence Avenue SW., Washington, DC 20585–0001, (202) 586–5581.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 0204–108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), reassigned by DOE Notice 1110.29 dated October 27, 1988, and clarified by the Secretary of Energy Notice SEN–10–89 dated August 3, 1989, and subsequent revisions, the Secretary of Energy delegated: (1) The authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Deputy Secretary of DOE; and (3) the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to FERC.

The consultation and comment period was initiated on October 20, 1989, with the announcement of the proposed firm power rate adjustment in the **Federal Register** (54 FR 43122). The **Federal Register** notice also announced a public information forum on November 21, 1989, and a public comment forum on January 25, 1990. On October 24, 1989, letters were sent to Integrated Projects customers and other interested parties to announce the proposed rate adjustment and the forums and to transmit copies of the **Federal Register** notice and the October 1989 rate brochure and appendix. The public information forum was held November 21, 1989, and the public comment forum was held January 25, 1990. The consultation and comment period ended on February 9, 1990.

All public comments were considered in the preparation of the rate order.

Rate Order No. WAPA–45 confirming and approving an increase firm power rate on an interim basis is issued, and the rate will be promptly submitted to the FERC for confirmation and approval on a final basis.

Issued at Washington, DC, August 27, 1990.

W. Henson Moore,

Deputy Secretary.

Order Confirming, Approving and Placing a Power Rate In effect on an Interim Basis

Rate Order No. WAPA–5

August 27, 1990.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 372, *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Act of 1939, 43 U.S.C. 485h(c), and specifically applicable to the Colorado River Storage Project (CRSP), the Rio Grande Project, and the Collbran Project were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), reassigned by DOE Notice 1110.29 dated October 27, 1988, and clarified by the Secretary of Energy Notice SEN–10–89 dated August 3, 1989, and subsequent revisions, the Secretary of Energy delegated: (1) To the Administrator of the Western Area Power Administration (Western) the authority to develop long-term power and transmission rates; (2) to the Deputy Secretary of DOE the authority on a nonexclusive basis to confirm, approve, and place such rates in effect on an interim basis; and (3) to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates. This rate order is issued pursuant to the delegation to the Administrator and the Deputy Secretary and the rate adjustment procedures at 10 CFR part 903, published in the **Federal Register** on September 18, 1985 (50 FR 37835).

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

Basin Fund—That Account in the U.S. Treasury, Established by the CRSP Act, into Which All Integrated Projects Revenues Are Deposited and from Which All Integrated Projects Expenses Are Paid.

C&RE—Conservation and Renewable Energy.

CREDA—Colorado River Energy Distributors Association.

CRSP—Colorado River Storage Project.

CRSP Act—Act of April 11, 1956, ch. 203, 70 Stat. 1053, 43 U.S.C. 620–620o.

CUP—Central Utah Project.

DOE—U.S. Department of Energy.

EA—Environmental Assessment.

EIS—Environmental Impact Statement.

FDR—Facility Development Report.

FERC—Federal Energy Regulatory Commission.

FONSI—Finding of No Significant (Environmental) Impact.

FY—Fiscal Year.

GWA—General Western Allocation.

I&D—Irrigation and Drainage.

kW—Kilowatts.

kWh—Kilowatthour.

kW-month—Kilowatts per Month.

Integrated Projects—The Combined Sales and Resources of the CRSP, Collbran, and Rio Grande Projects.

LAP—Loveland Area Projects.

M&I—Municipal and Industrial.

mills/kWh—Mills per Kilowatthour.

NEPA—National Environmental Policy Act of 1969.

NWF—National Wildlife Federation.

O&M—Operations and Maintenance.

Participating Projects—Those Irrigation Projects Authorized by the CRSP Act, as Amended, Being Developed in the Upper Basin States to Deliver the Upper Basin Allocation of Colorado River Water to Farmers and Municipalities.

PRS—Power Repayment Study.

Rate Brochure—The Brochure Dated October 1989 Detailing the Background of the Rate Proposal Contained in this Rate Order.

Rate Order PRS—The PRS Submitted with this Rate Order.

Reclamation—Bureau of Relcamation of the Department of the Interior.

SLCA—Salt Lake City Area.

UCRC—Upper Colorado River Commission.

Upper Basin—That Part of the Colorado River Basin Consisting of the Southwestern Part of Wyoming, Western Colorado, Most of New Mexico and Utah, and the Northwestern Section of Arizona.

Background

Public Notice and Comments

The Procedures and Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, have been followed by Western in the development of this firm power rate. The provisional firm power rate represents an increase of greater than 1 percent in the total Integrated Projects Revenues; therefore, it is a

major rate adjustment as defined at 10 CFR 903.2(e) and 903.2(f)(1). The distinction between a minor and a major rate adjustment is used only to determine the public procedures for the rate adjustment. The following items summarize the steps Western took to assure involvement of interested parties in the rate process.

1. A Federal Register notice was published on October 20, 1989 (54 FR 43122), that announced the proposed firm power rate, initiated the public consultation and comment period, and announced the public information and public comment forums. The proposed rate consisted of an energy charge of 6.64 mills/kWh and a capacity charge of $2.82 per kW-month.

2. Letters were sent to Integrated Projects customers and other interested parties on October 24, 1989, to announce the proposed rate adjustment and the public forums, and to transmit copies of the Federal Register notice, the brochure entitled "Salt Lake City Area Integrated Projects Proposed Firm Power Rate Adjustment, October 1989" (Rate Brochure), and the Rate Brochure appendix.

3. A public information forum was held on November 21, 1989, in Salt Lake City, Utah. Western explained the need for the proposed firm power rate increase and presented the results of the PRS. As of the November 21, 1989, forum, additional information used in the PRS indicated that the proposed rate should consist of an energy charge of 7.25 mills/kWh and a capacity charge of $3.09/kW-month.

4. A public comment forum was held on January 25, 1990, in Salt Lake City, Utah. Five persons, representing six organizations, made oral comments on the proposed rate and rate methodology.

5. Thirty written comment letters were postmarked through the end of the public consultation and comment period on February 9. An additional written comment was postmarked after February 9. All comments were considered in preparing this rate order.

6. Customers were sent information about the cash-flow problem and an informal customer meeting was held on June 20, 1990, at which Western's decisions concerning the rate and the cash-flow problems were discussed.

Project History

The Integrated Projects consists of the CRSP, Rio Grande, and Collbran Projects. The projects were integrated for marketing and ratemaking purposes on October 1, 1987. The goals of integration were to increase marketable resources, simplify contract and rate development and project administration, assure repayment of Collbran and Rio Grande Projects' cost, and create a common rate. The projects maintain their individual identities for financial accounting and repayment purposes, but their revenue requirements are integrated in one PRS for ratemaking.

Power Repayment Studies

PRS's are prepared each fiscal year to determine if power revenues will be sufficient to pay, within the prescribed time periods, all costs assigned to the power function. Repayment criteria are based on law, policies established in DOE Order RA 6120.2, and project-authorizing legislation. According to DOE Order RA 6120.2, power revenues are required to (1) repay power investment costs including interest within 50 years, (2) repay power replacement costs including interest within the service lives of the equipment not to exceed 50 years, (3) repay irrigation investment costs assigned to power within the time allowed for repayment by irrigation water users, and (4) repay all of the required annual expenses.

Separate PRS's were prepared for each of the projects to establish their individual revenue requirements as described below.

The Final FY 1989 Collbran Project PRS, completed in December 1989 and incorporated into this rate order, indicated a need for $1.6 million in annual average power-related gross revenue for FY 1991 through the Integrated Projects' ratesetting year of FY 2057. The ratesetting year is the year when annual expenses and required payments come closest to or exceed the available revenue. Revenues must cover the costs within the ratesetting year for a project to earn sufficient income.

The Final FY 1989 Rio Grande Project PRS, completed in December 1989 and incorporated into this rate order, indicated a need for $1.8 million in annual average power-related gross revenue for FY 1991 through the Integrated Projects' ratesetting year of FY 2057.

The Final FY 1989 CRSP PRS, incorporated into this rate order, showed a need for $82.9 million in annual average firm power-related gross revenue for FY 1991 through the Integrated Projects' ratesetting year of FY 2057.

The FY 1989 Integrated Projects PRS was developed by taking the FY 1989 CRSP PRS and adding the total annual power-related revenue requirements, generation, and capacity of the Collbran and Rio Grande Projects in the appropriate columns and years.

The Final FY 1989 Integrated Projects PRS, dated May 1990, and referenced herein as the Rate Order PRS, indicated the average annual firm power-related revenue requirement is $86.3 million for FY 1991 through the Integrated Projects' ratesetting year of 2057. This is $20.4 million more in annual average firm power-related gross revenue than would be earned for fiscal years 1991–2057 at the current Integrated Projects combined firm power rate of 9.92 mils/kWh. The Integrated Projects combined firm power rate necessary to meet the long-term revenue requirements listed above is 13.00 mils/kWh, effective on October 1, 1990.

All of these studies include the adjustments identified by auditors hired by Western to conduct independent audits of each project plus all available FY 1989 data.

The Basin Fund is the revolving fund account in the U.S. Treasury where Integrated Projects revenues are deposited and from which all Integrated Projects expenses are paid. The Basin Fund is also used to pay for the cost of initial acquisition of power-related equipment replacements for the CRSP. Revenues left in the Basin Fund at the end of the FY are returned to the U.S. Treasury as payment on capital investment and other assigned costs.

Becasue the Upper Colorado River Basin (Upper Basin) is now in the fourth year of a basin-wide drought, revenues from sales of surplus firm energy, excess firm capacity, and fuel replacement/economy energy have been considerably diminished. The decrease in revenues, coming together with the increased expense obligations, has created a critical cash-flow situation in the Basin Fund. Legislation prevents the Basin Fund from operating in a deficit condition. Provision of sufficient revenue in the Basin Fund to assure the financial integrity of the Integrated Projects for FY's 1991 and 1992 requires the addition of 1.50 mills/kWh to the provisional combined firm power base rate effective October 1, 1990, through September 30, 1992. This will provide a total of approximately $10 million in additional revenues for each of the 2 years to alleviate the cash-flow problem.

Existing and Increased Rates

The first and current Integrated Projects rate was placed in effect on October 1, 1987. This current rate consists of an energy charge of 5.0 mills/kWh and a capacity charge of $2.09/kW-month. From June 1, 1983, until integration of the projects, the CRSP firm power rate also consisted of an energy charge of 5.0 mills/kWh and a

capacity charge of $2.09/kW-month. Prior to integration, the Rio Grande Project rate consisted of an energy charge of 18.46 mills/kWh and a capacity charge of $7.85/kW-month. The last Collbran Project rate was an energy charge of 21.80 mills/kWh; the Collbran Project did not sell capacity.

In the October 20, 1989, Federal Register notice, Western proposed a rate consisting of an energy charge of 6.64 mills/kWh and a capacity charge of $2.82/kW-month.

The provisional rate adjustment to be effective October 1, 1990, is made up of two rates: (1) an increased combined rate for the first and second years of the rate adjustment period (October 1, 1990, through September 30, 1992) to cover a critical cash-flow situation in those years, and (2) a long-term rate to be effective for the balance of the 5-year rate adjustment period (October 1, 1992, through September 30, 1995).

The energy charge for the first 2 years will be 7.25 mills/kWh, and the capacity charge will be $3.08/kW-month for a combined rate of 14.50 mills/kWh when calculated at a 58.2-percent load factor. This is a total increase of 46 percent over the current energy charge of 5.0 mills/kWh and the current capacity charge of $2.09/kW-month or a combined rate of 9.92 mills/kWh calculated at 58.2-percent load factor and will be effective October 1, 1990, through September 30, 1992.

The firm power rate for the following 3 years consists of an energy charge of 6.50 mills/kWh and a capacity charge of $2.76/kW-month, which results in a combined rate of 13.00 mills/kWh. This is a 31-percent total increase over the current combined rate of 9.92 mills/kWh.

Dates effective	Energy (mills/kWh)	Capacity ($/kW-month)	Combined (mills/kWh)
10/1/90 through 9/30/92	7.25	3.08	14.50
10/1/92 through 9/30/95	6.50	2.76	13.00

Certificate of Rate

The Administrator of Western has certified that the Integrated Projects firm power rate is the lowest possible rate consistent with sound business principles. The rate has been developed in accordance with administrative policies and applicable laws.

Discussion

The rate proposed on October 20, 1989, was derived from the FY 1989 Integreated Projects Preliminary PRS, which contained estimated data for FY 1989. The provisional rate is based upon the FY 1989 Rate Order PRS, including actual operation and financial data for FY 1989, as modified by changes due to Western's response to comment from customers and other interested parties and by new information regarding near-term resource availability and purchased power costs.

After incorporating customer comments and concerns into the Rate Order PRS, the base rate increase declined to approximately 31 percent over the long-term life of the PRS.

Basin Fund Cash-Flow

The cash-flow situation of the Integrated Projects has worsened considerably since the FY 1989 Integrated Projects Preliminary PRS was prepared.

At the time the FY 1989 Integrated Projects Preliminary PRS was prepared, the entire Upper Colorado River Basin was beginning its fourth year of drought conditions, restricting the resources available to both CRSP and the Collbran Project. It was expected at that time that the drought might begin to ease in the near future. Revised projections now forecase that the low water conditions will continue for an additional year. Power generation, as determined by minimum water releases, to meet the downstream requirements of the Colorado River Compacts is expected to remain at minimum production for up to 3 years after water conditions return to normal, due to the need to refill low reservoirs.

The drought has meant both a decrease in revenue to the Integrated Projects, because surplus power has not been available for sale, and an increase in costs, as power is purchased to meet contractual obligations to the Integrated Projects customers. The lengthening of the dry period worsens what was already a tentative financial situation in the cash available in the Basin Fund to meet the ongoing expenses of the Integrated Projects.

Under provisions of NEPA, an EA was completed in FY 1982 for the installation of generator uprates at Glen Canyon Powerplant. Because of comments received during the preparation of the Glen Canyon EA, Reclamation initiated studies of the environmental and recreational effects of the operation of Glen Canyon Dam on the Grand Canyon. Phase II of these Glen Canyon Environmental Studies is presently underway. In addition, the Secretary of the Interior has ordered that an EIS be prepared, evaluating the effects of Glen Canyon Dam operations on the Grand Canyon.

Flows from Glen Canyon Dam will be altered for research purposes related to the EIS in FY's 1990 and 1991. This will strain the Integrated Projects' financial condition in three ways: (1) Revenue lost due to diminished Glen Canyon power production, (2) additional unplanned purchased power costs (estimated at $2.8 million in FY 1990 and $13.5 million in FY 1991) to replace lost generation and meet contractual obligations, and (3) environmental study costs for research data collection.

The Rate Order PRS contains those costs associated with the Glen Canyon Environmental Studies, while those costs stemming from the Glen Canyon EIS are discussed separately.

The combination of factors arising since the FY 1989 Integrated Projects Preliminary PRS was prepared means that the Basin Fund will have insufficient cash to pay all of the annual operating expenses anticipated for the Integrated Projects for FY's 1991 and 1992. To make the best use of the available financial resources, no payments are planned for interest or investments for FY's 1990, 1991, and 1992; repayment of interest and investment will resume after this period. Even with this procedure, a cash shortfall is unavoidable at the proposed combined firm base rate of 13.00 mills/kWh.

The Basin Fund cash-flow anticipated for FY's 1990–1992 is displayed in Table I.

It is not possible to install a new Integrated Projects firm power base rate quickly enough to prevent the deficit forecast for FY 1990. This effectively extends the impact of the FY 1990 deficit into FY 1992.

All payments that can be deferred during the period of the critical cash-flow situation will be. No interest or principal payments will be made in FY's 1990–1992.

TABLE I—BASIN FUND CASH-FLOW

	Millions of Dollars		
	FY 1990	FY 1991	FY 1992
Projected gross receipts	$73.2	$97.0	$97.1
Less: Budgeted cash requirements: Reclamation O&M	$21.0	$20.8	$25.2
Western O&M	25.1	28.4	29.1

TABLE I—BASIN FUND CASH-FLOW—Continued

	Millions of Dollars		
	FY 1990	FY 1991	FY 1992
Purchased power cost	19.8	25.8	31.8
Parker-Davis inter-change settlement	6.0	6.0	6.0
Interest expense	13.0	27.6	27.6
Payments to Collbran & Rio Grande	3.6	3.7	3.7
Replacement acquisition	3.6	4.0	3.8
Total budgeted cash requirements	$92.1	$116.3	$127.2
Less:			
Unbudgeted cash requirements:			
Purchased power research flows	$2.8	$13.5	0.0
Glen Canyon EIS	4.0	5.8	0.0
Endangered fish recovery	0.0	0.1	0.2
Navajo dam settlement	0.0	0.0	6.5
Interest cost for deferrals	0.0	1.3	4.2
Total unbudgeted cash requirements	$6.8	$20.7	$10.9
Total annual net revenues	($25.7)	($40.0)	($41.0)
Plus: Prior-year balance forward	$14.9	$2.2	$0.0
Projected defcit	($10.8)	($37.8)	($41.0)
Less:			
Deferred payments:			
Interest	$13.0	$27.6	$27.6
Interest cost for deferrals	0.0	1.3	4.2
Parker-Davis inter-change settlement	0.0	0.6	(0.6)
Total deferred payments	$13.0	$29.5	$31.2
Yearend cash balance	$2.2	($8.3)	($9.8)
Additional cash provided at 1.5 mills	$0.0	$8.3	$9.9
Revised cash after deferrals	2.2	0.0	0.1

Revenue projections are calculated at the current combined Integrated Projects firm power rate of 9.92 mills/kWh in FY 1990, and at the provisional combined base firm power rate of 13.0 mills/kWh in FY's 1991 and 1992.

Provision of sufficient revenue in the Basin Fund as required by law to assure the financial integrity of the Integrated Projects for FY's 1991 and 1992 requires the addition of 1.50 mills/kWh to the provisional combined firm power base rate effective October 1, 1990, through September 30, 1992, to avoid a negative yearend cash balance.

Provision for Rate Reduction

The possibility exists, through such actions as passage of legislation or administrative decision by the Department of the Interior, that a reduction of the costs to be borne by the power users related to the Glen Canyon environmental studies might take place. In order to provide for the possibility of a reduction, the Administrator of Western may adjust the adder components within the combined rate of 14.5 mills/kWh downward during FY's 1991 and 1992 as much as 1.5 mills/kWh in accordance with the attachment to Rate Schedule SLIP-F2. The basis for any adjustment would be the ratio of the net amount of the reduction to the amount of the present estimate of the cash-flow requirements, times the adder component of the monthly rates for energy and demand as specified in Rate Schedule SLIP-F2 for FY's 1991 and 1992. Any adjustment would be based on the best information available at the time. The rate will be effective on the first day of the month after the date the reduction is effective and will be implemented after written notice is given to the FERC and to the Integrated Projects customers.

If the reduced costs include budgeted costs, that reduction, as well as any retroactive reduction, will be included in the next PRS; and the full benefit of these reductions will be achieved in the next rate adjustment.

Load Factors

The Integrated Projects must earn enough revenue to pay all operating expenses and to assure the timely repayment of all capital costs assigned to power. The revenue earned from firm energy and capacity sales is dependent upon the load factors used in calculating the power sales rates. The revenue earned is required to cover all costs, whatever the relative prices of energy and capacity.

Some commenters estimated the rate effect of many of the suggested revisions for the FY 1989 Integrated Projects Preliminary PRS. All of the commenters' rate calculations were done with a system load factor of 45 percent, rather than at the 58.2-percent load factor contained in the PRS. Since the estimates supplied by the commenters will not match numbers provided by Western, the following explanation is provided.

Load factors are determined by the amount of energy furnished with every kW purchased over a finite time period. Calculations are as follows:

$$\text{Percent load factor} = \frac{\text{Delivered kWh per Time Period}}{\text{Maximum kWh per Time Period}}$$

or

$$\text{58.2-percent load factor} = \frac{\text{5,098 annual delivered kWh}}{\text{8,760 annual maximum kWh}}$$

Because of downstream water delivery obligations, the system load factor in the initial CRSP marketing plan was 58.2 percent. This figure was written into the first CRSP power sales contracts in the mid-1960's. Power rates were set so that approximately 50 percent of power sales revenue was obtained from energy and approximately 50 percent came from capacity. At a 58.2 percent system load factor, this meant that the annual sale of 1 kW of capacity earned the same total revenue as the annual sale of 5.098 kWh of energy.

Over its lifetime, the operation of the CRSP has changed, altering the system load factor of power deliveries. Project integration has heightened this process, so that now the long-term Integrated Projects system load factor is approximately 45 percent. This means that capacity sales have gradually come to earn more than one-half of the realized firm power revenue while energy earns less than one-half of the annual firm power revenue.

Representatives of the Integrated Projects customers requested that Western not take steps to restore the previous balance between relative capacity and energy earnings during this rate proceeding. The customers have recently signed 15-year power delivery contracts that specified the amounts of capacity and energy they would receive. Many of the delivery decisions were based upon the relative costs of capacity and energy. The customer representatives feel that it would impose a hardship on many purchasers to alter the existing cost relationships.

To honor customer requests, Western has continued to calculate rates as though the system load factor were 58.2 percent.

In quoting rates for this rate action, Western has referred to combined mill rates per kWh. If the 13.00 mills/kWh combined provisional base rate, calculated at a 58.2-percent system load factor, requested in this rate order were calculated at the actual system load factor of approximately 45 percent, the composite rate would be 15.01 mills/kWh.

Load factors on the customer's systems will normally be different than Western's because of differences in the makeup of their supplies and loads.

Comments

During the 113-day comment period, Western received 30 comment letters. An additional comment letter was received and considered after the end of the comment period. In addition, five persons, representing six organizations, commented during the January 25, 1990, public comment forum. Additional comments were given and considered at a subsequent informal customer meeting on June 20, 1990, on the decisions Western made concerning the rate.

Written coments were received from the following sources:

Arizona Municipal Power Users' Association (Arizona).
Arizona Power Pooling Association (Arizona).
Arkansas River Power Authority (Colorado).
Bountiful City Light and Power (Utah).
Bridger Valley Electric Association (Wyoming).
Colorado River Energy Distributors Association (two sets of comments, dated November 6, 1989, and February 8, 1990, were submitted).
U.S. Department of Defense, Department of the Air Force.
U.S. Department of Energy, Albuquerque Operations Office (New Mexico).
City of Enterprise (Utah).
Fillmore City (Utah).
Flowell Electric Association, Inc. (Utah).
City of Gunnison (Colorado).
Intermountain Consumer Power Association.
City of Logan (Utah).
County of Los Alamos (New Mexico).
Maricopa Water District (Arizona).
Moon Lake Electric Association (Utah).
Morgan City Corporation (Utah).
National Wildlife Federation (NWF).
Navajo Agricultural Products Industry/Navajo Indian Irrigation Project (Arizona).
Page Electric Utility (Arizona).
Plains Electric Generation and Transmission Cooperative, Inc. (New Mexico).
Platte River Power Authority (Colorado).
City of Provo (Utah).
Roosevelt Irrigation District (Arizona).
Salt River Project (Arizona).
City of St. George (Utah).
City of Truth or Consequences (New Mexico).
Upper Colorado River Commission (UCRC).
Wyoming Public Service Commission (Wyoming).

Representatives of the following organizations made oral comments:

Arkansas River Power Authority.
Colorado River Energy Distributors Association.
Intermountain Consumer Power Association.
Plains Electric Generation and Transmission Cooperative, Inc.
Platte River Power Authority.
Utah Municipal Power Agency.

The majority of comments were from Integrated Projects power customers. However, four noncustomer commenters should be identified:

1. CREDA is an organization of power distributors within the Integrated Projects marketing area, which purchase approximately 85 percent of the power furnished by the Integrated Projects.

2. NWF is the United States largest conservation organization with over 5.6 million members and supporters and with affiliated organizations in 52 States and territories, including each of the Upper Basin States.

3. UCRC is composed of representatives appointed by the governors of each of the Upper Basin States of Colorado, New Mexico, Utah, and Wyoming. It is charged with the coordination of the development of the Colorado River water allocated to the Upper Basin by the Colorado River Compact of 1922.

4. The Public Service Commission of Wyoming is a State agency charged with regulating utility rates within the State of Wyoming.

Comments and responses are stated below. Comments are paraphrased for brevity and consistency.

1. The following comments address concerns about the CRSP transmission system:

a. One customer and CREDA stated that costs incurred in the new transmission construction projects in the FY 1989 Integrated Projects Preliminary PRS outweigh the offsetting benefits. Approximately $207 million in new transmission investment was cited as coming into service during the 5-year cost-evaluation period. Both commenters estimated that the annual interest on the new investment would total approximately $21 million while the increased revenues shown to be derived from the improvements in the CRSP transmission system were identified as $4.3 million per year. An additional 15 customers concurred.

Response: As a result of the customer comments, Western conducted a review of all potential transmission revenues, based on current contracts, serious inquires for transmission service over CRSP's new lines, and an assessment of additional capacity expected to become available as shown in Table II.

TABLE II

Fiscal year	Source		Annual revenue
FY 1990	Long-Term Firm Transmission Service:		
	Salt River Project	33.000 MW	
	NTUA	32.000 MW	
	Delta—Montrose E.A	0.015 MW	
	ICPA	14.700 MW	
	Miscellaneous	56.985 MW	
	Total	136.700 MW	$2,969,124
	Temporary Firm Transmission Service (Presently Under Contract to Salt River Project)	100.000 MW	2,172,000
	Nonfirm Transmission Service (Historical Average)		380,000
	Colorado—Ute/Salt River Project Exchange 500 MW SRP/100 MW C–U)		1,050,000
	Annual Total		6,571,124
FY 1991	FY 1990 Total plus		6,571,124
	Added Long-Term Firm Transmission Service (ICPA 0.9 MW)		19,548
	Glen Canyon—Pinnacle Peak Transmission Line (APPA: 103 MW)		2,337,160
	Bears Ears—Bonanza Transmission Line (Deseret G&T: 500 MW)		869,000
	[1] Colorado East-West Transmission (Miscellaneous: 50 MW)		1,086,000
	Phase-Shifting Transformers: Western Colorado System	7.3 MW	
	[1] North/South Capacity Colorado Springs/PRPA	50.0 MW	1,243,680
	Total	57.3 MW	
	Annual Total		12,126,512
FY 1992	FY 1991 Total plus		12,126,512
	Added Long-Term Firm Transmission Service		
	ICPA	0.9 MW	
	Miscellaneous	0.7 MW	34,752
	Annual Total		12,161,264
FY 1993	FY 1992 Total plus		12,161,264
	Added Long-Term Firm Transmission Service (Miscellaneous: 1.2 MW)		26,064
	Annual Total		12,187,328
FY 1994	FY 1993 Total plus		12,187,328
	Added Long-Term Firm Transmission Service (Miscellaneous: 0.8 MW)		17,376
	Annual Total		12,204,704

[1] Additional transmission made available by improved system efficiency.

All transmission revenues are calculated at the present CRSP firm transmission rate of $21.72/kW per year.

This modification resulted in a decrease of approximately 0.58 mills/kWh in the combined Integrated Projects firm power rate.

b. The customer and CREDA stated that the FDR for the Bears Ears-Bonanza Transmission Line (formerly referred to as the Craig-Bonanza Transmission Line) estimated system benefits associated with increased transmission service at $5.8 million per year and benefits from reduced transmission losses to be $1.5 million annually. The FY 1989 Integrated Projects Preliminary PRS indicates increased revenues from the entire new transmission investment at less than was claimed for the Craig-Bonanza Line alone. An additional 15 customers concurred.

Response: The FDR referenced by the commenters is an engineering document that includes economic cost-benefit analyses that all new investment must undergo before construction is authorized. These analysis (1) study the engineering feasibility of the proposed investment, (2) estimate the proposed investment's construction costs, and (3) project economic benefits that could be expected from construction.

FDR's have not addressed repayment issues in the past, and their economic data have not been considered in the preparation of PRS's. Rate impact analysis has recently been implemented as part of the approval process for future FDR's.

While some of the new investment will add transmission capacity to the CRSP system, it is also designed to improve the system's capability of transmitting increased power from uprated integrated Projects powerplants to assure overall transmission system viability, and to correct deficiencies that impede the efficient movement and use of Integrated Projects power. It is a cost properly included in the Integrated Projects Rate Order PRS.

c. CREDA noted that FDR's were not available for three of the CRSP transmission line projects included in the FY 1989 Integrated Projects Preliminary PRS and suggested that no construction should be included in the Integrated Projects PRS unless and until the completed FDR or other economic evaluation is completed for stated construction. An additional 15 customers concurred.

Response: The estimated inservice dates for the three CRSP transmission line projects in question (Northern Arizona, Glen Canyon-Navajo, and Shiprock-Albuquerque) have been rescheduled beyond the end of the 5-year cost-evaluation period used in the Rate Order PRS and no longer affect the power rate. FDR's or other economic evaluations will be completed before these transmission lines are included in future PRS's.

d. CREDA requested that new investment of over $126 million be removed from the Rate Order PRS for the FY 1992-1994 period. An additional 15 customers concurred.

Response: It has become apparent since the FY 1989 Integrated Projects Preliminary PRS was prepared that several transmission system investments included in that PRS will not be in service before the end of the 5-year cost-evaluation period covered by this rate action; i.e., before the end of FY 1995. These investments have been rescheduled to reflect more accurately their anticipated inservice dates and are shown in Table III.

TABLE III

Investment	Cost	Scheduled in service	
		FY originally [1]	FY revised
Animas-La Plata System	$4,436,049	1993	1997
CUP-Bonneville System	4,708,751	1992	1996
Glen Canyon-Navajo Line	10,681,042	1994	1996
Northern Arizona Line	66,812,454	1994	1996
Shiprock-Albuquerque Line	27 953,15"	1994	1996
Western Colorado System (Phase II)	8,350,492	1992-93	1997
Total Rescheduled Cost	122,941 945		

[1] Dates used in the FY 1989 Integrated Projects Preliminary PRS. This modification resulted in a decrease of approximately 0.42 mills/kWh in the combined Integrated Projects firm power rate

e CREDA requested that O&M expense and transmission service revenues be adjusted to reflect anticipated benefits in reduced maintenance costs from all new investment included in the Rate Order PRS. An additional 15 customers concurred.

Response: Considerable benefit from the new investment is anticipated in reduced costs and in the capture of previously foregone revenues. The majority of new investment, such as the phase-shifting transformers at Shiprock and Waterflow Substations and the Western Colorado Transmission System, is largely intended to control the chronic loopflow on CRSP's transmission system, thereby drastically reducing the unintended loading of CRSP transmission lines with non-Integrated Projects power. Loopflow impacts the Integrated Projects in several ways:

(1) It is sometimes impossible to deliver power from CRSP resources located in the Northern Division of the marketing area; i.e., above Lee Ferry Arizona, to customers in the South Because the Integrated Projects have commitments to supply firm power the shortfall must be met with power purchased in the South Division to bypass the loopflow bottleneck). Lower cost generation and/or purchased power is replaced with more expensive purchases in Arizona, driving up operating costs.

(2) CRSP generation produced by resources in the Northern Division may, at times, be more than is needed to meet regional firm power obligations. This power can be sold as fuel replacement/economy energy in the Southern Division if transmission is available to deliver it. When loopflow overloads the transmission system, the revenues from some fuel replacement sales are foregone, reducing the Integrated Projects income.

(3) CRSP earns additional revenue by providing short-term transmission service to utilites within its marketing area. When the CRSP transmission system is unavailable due to loopflow, this income is reduced or lost.

The increased transmission capability is expected to allow the Integrated Projects access to less expensive purchased power from the northern portion of the marketing area for firming and for fuel replacement/economy energy sales. This benefit is displayed in the FY 1989 Integrated Projects Preliminary PRS with an estimated average cost for future purchased power of 23.0 mills/kWh, which folds the lower cost of power from the Northern Division into the higher-cost purchased power available in the Southern Division.

Western has always assumed optimum transmission system efficiency in estimating future purchases and sales in the Integrated Projects PRS's. Actual experience has been incorporated into historical data Specific projections will be included in future PRS's. The benefits anticipated for new transmission investment were detailed in section 1.a above

f CREDA requested that marketable power be adjusted to reflect the reduced transmission losses to be expected from the new transmission investment in the Rate Order PRS An additional 15 customers concurred

Response· We agree with the commenter's assumption that new transmission lines will reduce losses along specific transmission paths, but the overall system losses are still approximately 6.5 percent. This loss figure is still an appropriate adjustment for determining the marketable resources in the Rate Order PRS

g. CREDA requested that transmission service revenues and O&M expenses associated with those FY 1992–1994 investments CREDA suggested be deleted from the Rate Order PRS also be removed. An additional 15 customers concurred

Response: Transmission service revenues and O&M expense associated with all rescheduled investment have been deleted from the Rate Order PRS.

h. Three customers suggested that the customers using the CRSP transmission system bear the full cost of that system removing it from consideration in Integrated Projects power-related rates.

Response: The CRSP transmission system provides interconnections between the Integrated Projects powerplants and various Federal, public, and investor-owned entities for delivery of Integrated Projects power to designated points (Federal points-of-delivery) for receipt by customers. Transmission service rates are based upon the total power moved over the system, regardless of its source. All users of the system, both Integrated Projects power customers and transmission-only customers, pay the same cost per kilowatt for firm transmission service. The current firm transmission rate is $21.72/kW-year as announced in the FEDERAL REGISTER on July 12, 1989 (54 FR 29378). Since approximately 94 percent of the power sent over the CRSP transmission system its power delivered to Integrated Projects customers, most of the cost of the system is borne by the Integrated Projects power customers. Users who contract for a path to move non-Integrated Projects firm power over the system pay costs proportional to their use and level of service. Nonfirm transmission rates are negotiated on a case-by-case basis depending on current market conditions at the time All transmission revenues earned are included in CRSP and Integrated Projects PRS's as additional revenues, reducing the total sum to be earned from firm power sales

i. One customer stated that the bulk of new investment shown in the FY 1989 Integrated Projects Preliminary PRS is related to transmission, with less than $10 million being caused by improvements to Integrated Projects generation capabilities

Response We agree with the commenter. Construction of the various Integrated Projects powerplants is essentially complete with the only remaining substantial capital outlays related to replacements, plant uprates, and generator rewinds, as warranted However the CRSP transmission system has not yet reached its full usefulness or efficiency Most of the new construction is designed to help the CRSP transmission system provide more cost-effective service and improved reliability to Integrated Projects power customers.

2. The following comments were directed to the O&M expense shown in the FY 1989 Integrated Projects Preliminary PRS. Since the Integrated Projects PRS is built upon the CRSP PRS, the comments generally relate to the FY 1989 CRSP Preliminary PRS used in developing the FY 1989 Integrated Projects Preliminary PRS:

a. Four customers and CREDA expressed the opinion that the increase in CRSP O&M since the last CRSP rate increase (in FY 1983) has been excessive. It was suggested that the O&M cost increases should have been more consistent with the rate of general inflation. An additional 13 customers concurred with the noted statements.

Response: Some increases in O&M costs since FY 1983 have been related to the record-setting precipitation experienced in the Upper Basin in the mid-1980's. The abundant water caused considerable damage to CRSP facilities resulting in unexpected, unbudgeted O&M expenses. Also, new facilities have come into service, requiring a modest increase in O&M work, while aging older plant facilities have needed proportionately more maintenance. Some new O&M expense categories have been added and some expenses have been reclassified as O&M expenses. This has increased the total O&M costs and the present figures are no longer comparable to those used in previous years. Examples of the new costs include environmental research costs, polychlorinated biphenal-contaminated oil removal, and new methods of distributing overhead charges.

Western is sensitive to escalating O&M expenses and has established a cost-containment task force to keep increases to a minimum in the future.

b. Nine customers suggested that Western and Reclamation reexamine their budgets for FY's 1990–1994 with an eye toward reducing the projected costs.

Response: Both Reclamation and Western budgets have been carefully reviewed, and it has been determined that only those items for O&M that are considered essential to the continued operation of the Integrated Projects are included. Therefore no changes have been made to O&M expense projections.

3. The following comments were directed specifically to the costs for CRSP storage unit O&M allocated to the irrigation purpose but being paid by power revenues:

a. CREDA and six customers stated that it is their understanding that power customers are not responsible for the O&M expenses incurred by irrigation water users. Ten additional customers concurred.

Response: All storage unit irrigation costs are paid from the Basin Fund according to the CRSP legislation. Because power is the major source of monies within the Basin Fund, power is effectively responsible for all storage unit O&M expense allocated to power and irrigation.

Section 5(c) of the CRSP Act states that

> * * * All revenues collected in connection with the operation of the Colorado River Storage Project shall be credited to the Basin Fund, and shall be available, without further appropriation, for (1) defraying the costs of operation, maintenance, and replacement of, and emergency expenditures for, all facilities of the Colorado River Storage Project and participating projects * * * provided, that with respect to each participating project, such costs shall be paid from revenues received from each such project . . .

In CRSP and Integrated Projects PRS's prior to FY 1989, storage unit O&M costs allocated to irrigation were included in those O&M expenses assigned to power. In preparing the FY 1989 Preliminary CRSP PRS, the costs allocated to irrigation but paid by power were identified separately.

Since no irrigators are directly served by any of the storage units, all storage unit reimbursable capital costs and O&M assigned to irrigation are the responsibility of power. Irrigators are responsible for all O&M expenses associated with the participating projects.

b. Two customers asked if power users from any project other than CRSP pay O&M expenses allocated to irrigation.

Response: There are presently no other projects for which irrigation-related O&M is paid from power revenues.

4. The following comments were directed specifically to the GWA.

Background: Western overhead expenses are originally charged into clearing accounts and distributed to direct work orders based upon direct labor hours worked. In the SLCA, historically about 70 percent of the direct labor is performed for O&M, with 30 percent performed for construction.

Touche Ross International (now Deloitte and Touche) in FY 1988 performed a study of Western's overhead charging practices. They determined that there were certain charges that should no longer be distributed by the direct labor-hour method but should be an expense of doing business. These overhead costs became known as GWA, and the SLCA, most are expensed to CRSP O&M. Those overhead costs not determined to be GWA are still distributed based upon direct labor hours.

The Deloitte and Touche recommendation was implemented Western-wide in FY 1989.

a. CREDA and 15 customers stated that the inclusion of the GWA allocation in O&M costs appears to have been based, at least in part, on an assumption reached by Deloitte and Touche that it would have a relatively minor impact of approximately $500,000 per year. Because the actual budgetary impact is now estimated to be $1.7 million per year, the commenters requested that Western reevaluate the allocation.

Response: Deloitte and Touche estimated that CRSP would have nearly $5.0 million of overhead costs that would now be GWA. Of that total, they estimated that 10 percent was previously cosponsored and reimbursable work and would now be expensed, thus adding around $500,000 to O&M expense. Deloitte and Touche failed to take into account that about 30 percent of CRSP GWA costs had previously been charged to construction and capitalized. The net effect in FY 1989 was an increase of $1.6 million to CRSP O&M that previously was capitalized or paid by Western's cosponsored and reimbursable customers together with a corresponding decrease in capital cost charged to construction. The budgeted increase to O&M because of the methodology change in FY 1990 is $1.7 million. Notwithstanding the inaccurate Deloitte and Touche assessment of impact, the current GWA procedure reflects a businesslike approach to the treatment of the overhead issue. Western's reevaluation has resulted in a decision to retain the GWA approach.

b. CREDA and 15 customers stated that the assignment of the entire GWA to O&M expense may result in construction costs being borne by O&M. In an agency with a construction program as large as Western's, commenters found it hard to believe that so much cost attributable to construction is actually an O&M expense.

Response: Western agrees that the implementation of GWA has had the effect of shifting a sizeable amount of costs from construction to O&M. As part of a continuing effort to improve Western's financial designation and allocation of overhead costs, the GWA methodology was implemented. The specific items that were previously classified as overhead and are now GWA are those that are felt to be a part of Western's continuing operations and as such should not be distributed

through the direct labor hour base to construction and/or cosponsored participants.

c. CREDA and 15 customers noted that the GWA for FY 1990 is more than double that for the succeeding years. Is 1990's GWA double-counted?

Response: The figure identified as GWA expense in FY 1990 contains all CRSP GWA costs, those that would have previously been capitalized and those that would have previously been expensed under other categories ($5.1 million). The remaining FY 1990 O&M numbers do not contain any GWA costs. The figures shown as GWA expense in subsequent years contain only the reassigned annual O&M costs, which would have previously been capitalized ($1.7 million). The other GWA costs, which would have been O&M expense under the old accounting method, are included in the remaining O&M numbers. It is this display that makes the FY 1990 GWA cost appear excessive.

d. One customer requested that the GWA be phased in over a period of several years, due to its substantial impact upon O&M expenses.

Response: Phasing in the GWA costs would require charging them to another activity in the meantime, until the entire amount could be picked up by O&M. Because the expenses have been determined to be O&M costs, rather than capital items, they are properly chargeable to O&M and are included as soon as they occur.

e. Two customers stated their belief that the GWA is unjustified, and the rationale for it is insupportable.

Response: Western believes that the GWA is appropriate. The GWA is a redistribution of costs that have always existed, rather than the incorporation of new expenses. The new cost distribution allows expenses to be borne more fairly by the projects they serve and to avoid an undue overhead burden associated with reimbursable and construction work. All costs associated with the administration and operation of Western are reimbursable, and the GWA assures that this is done.

5. Many comments focused on the CUP, one of CRSP's participating projects:

Background: The CUP consists of five separable units: Bonneville, Jensen, Uintah, Upalco, and Vernal. The Bonneville Unit is composed of four systems identified according to purpose: Collection, M&I, Diamond Fork, and I&D. The Collection System gathers water from that portion of eastern Utah located in the Upper Colorado River Basin for delivey to the M&I and I&D Systems. What is referred to as the I&D System will actually distribute I&D water to irrigators in central Utah. The Collection and M&I Systems are almost completed with the Jordanelle Dam and Reservoir now under construction. The Diamond Fork System is partially constructed and awaiting congressional action to increase its appropriation ceiling by approximately $64 million before it can be finished. The I&D distribution system has yet to receive congressional appropriation ceiling and funding.

Through FY 1988, only a minor portion of the Bonneville Unit's Collection System was included in the ratesetting years and influenced the Integrated Projects power rate. For the Rate Order PRS, all funds that have been spent or obligated which met the tests of the CREDA agreement, including most of the Collection and Diamond Fork Systems, have been inserted into the CRSP PRS's ratesetting years resulting in an increase in repayment obligation of over $400 million. Reclamation has often referred to the spent and obligated money as A costs, and to unappropriated funds as B costs. Reclamation has stated that some facilities designed to collect and transport water for irrigation and thus chargeable to the I&D System are included in the A costs.

All discussions pertain only to those costs allocated to irrigation for repayment and being assumed by power because they exceed the irrigators' contractual obligation as determined by their ability to pay. Many of the comments received have addressed the scheduling of the repayment due dates of various portions of the CUP's Bonneville Unit within the CRSP PRS ratesetting years.

a. CREDA and 18 customers stated that the only participating projects that may properly be included within the ratesetting years of the CRSP PRS are those for which construction funds for completion of the project or separable feature future of the project have been appropriated by Congress.

Response: Reclamation and Western executed an agreement on August 26, 1983 (Reclamation-Western agreement), setting down criteria under which CRSP participating projects were to be included or excluded from the CRSP PRS ratesetting years.

The appropriation of construction funds by Congress is not one of the conditions required by the Reclamation/Western agreement before participating project repayment costs are included in the CRSP's power rate.

b. CREDA and 14 customers stated that because the purpose of large parts of the Collection System and all of the Diamond Fork System is to provide water for the I&D System, the Collection System and the Diamond Fork System should be excluded from the CRSP PRS until the I&D System is completely funded for construction.

Response: Some of the A costs (noted above) included facilities designed in part to collect water and transport it to the I&D System. The appropriated money has been spent and the facilities are either completed or close to completion. Some of the joint costs of these facilities are assigned to power for repayment because they exceed the irrigators' ability to repay. Western is obligated to assure that these costs will be repaid, and they are included in the ratesetting years of the Rate Order PRS.

c. CREDA and four customers said that power should not bear repayment responsibility for any CUP water delivery system that may be developed to supply water to purposes other than irrigation.

Response: Western agrees with the commenters. Water-related capital costs are assigned to the various functions of the participating projects, which are almost entirely M&I and irrigation water. Power is to pay all investment costs assigned to irrigation beyond the ability of the irrigators to repay. The M&I water users are responsible for all M&I-related investment. Capital costs associated with water used for purposes other than irrigation and M&I, such as fish and wildlife and recreation, are either repayable or nonreimbursable as defined by Congress. O&M costs allocated to recreation are nonreimbursable.

d. One commenter stated that the inclusion of unfinished CUP irrigation-related investment for facilities that may never be completed in the CRSP PRS ratesetting years goes counter to standard utility industry practice.

Response: CRSP cannot be compared to a standard utility. Congress established CRSP as an ultimate-development project, which may be defined as a comprehensive development of water resources encompassing many projects, features, and functions and spanning a number of years. The power function is assigned the tasks of earning sufficient funds to pay for all expected construction costs allocated to irrigation and beyond the irrigators' ability to repay for all authorized participating projects, plus the associated funds to the apportioned among the States of the Upper Basin and credited to the repayment of participating projects in those States. FERC has specifically recognized the obligation of CRSP to collect revenues in

excess of operating needs to assist in the repayment of future irrigation development in order to comply with the intent of the CRSP legislation. See 21 FERC, section 61,020, dated October 12, 1982.

Those CUP cost within the Rate Order PRS ratesetting years only include construction that is essentially complete. All CUP costs related to the unfinished Bonneville Unit investment, along with all other authorized participating projects that do not meet the criteria detailed in the Reclamation/Western agreement, have not been allowed to affect the rate.

e. One customer said that because the CUP has not obtained clear legal use of the water that will go to the I&D system, the completion of the project is highly uncertain. Power users should not pay rates based upon such uncertainty.

Response: The only portions of the CUP being allowed to influence the rates have met the criteria in the Reclamation/Western agreement, which states, in pertinent part:

* * * water rights are *substantially acquired* * * * (emphasis added).

Reclamation has determined that this criterion has been met for facilities that influence the rate.

6. Several comments related to the inclusion of estimated future water depletions within the FY 1989 Integrated Projects Preliminary PRS.

a. Eighteen customers and CREDA objected to the inclusion of unspecified water depletions within the PRS. These are depletions over and above those required for the participating projects and for which no specific use has yet been developed.

Response: Based on the Colorado River Compact of 1922 and the Glen Canyon Dam operating criteria, 7.5 million acre-feet of Colorado River water above Lee Ferry, Arizona, is presumed available annually to the Upper Basin States for consumptive use. The water is then divided among the Upper Basin States in accordance with the Upper Colorado River Basin Compact of 1949, as follows:

Arizona 50,000 acre-feet/year

The remaining 7.45 million acre-feet are allocated among the remaining States to maximum amounts of:

State	Percent	Acre-feet per year
Colorado	51.75	3,855,375
New Mexico	11.25	838,125
Utah	23.00	1,713,500
Wyoming	14.00	1,043,000

Each Upper Basin State may use its water allocation as it desires. The CRSP participating projects are being developed by the Federal Government to partially fulfill this purpose. Additionally, each Upper Basin State has separate, non-Federal water projects completed, under construction, in the planning stages, or anticipated at some future date to use the remainder of its allocation of Colorado River water. The apportionment of net CRSP revenues to the Upper Basin States is intended to assist them in repaying the cost of the participating projects.

Not all Upper Basin States have developed plans for the use of their full allocations of Colorado River water. The depletion schedule in the FY 1989 CRSP Preliminary PRS includes the assumption that all of the water for which any plans (no matter how tentative) exist would be used by those projects at the earliest opportunity. Water not associated with participating projects or certain non-Federal development we set aside as unspecified depletions or unidentified future development.

Western has determined that depletions above those required for water development projects likely to be in place by FY 2010 should not affect the current proposed power rate. The Upper Basin States are not opposing this concept. However, they have expressed concern that such an assumption could be used as a precedent by those opposing additional water development in the Upper Basin. It is emphasized that the water is allocated to the Upper Basin States by the Colorado River Compacts and that, as the States develop consumptive uses for it, the related depletions will again affect the Integrated Projects firm power rates.

b. Twelve customers and CREDA stated that the depletion schedule should match the repayment schedule, so that depletions for any participating project scheduled for repayment beyond the CRSP PRS ratesetting years should not be allowed to impact the CRSP rate.

Response: All authorized participating projects are contained within every PRS incorporating CRSP including the FY 1989 Integrated Projects Preliminary PRS. The August 1983 agreement formalized the principle that participating projects that are unlikely to be built will not influence the rate charged to power customers. This is done by rescheduling the repayment due dates for the uncertain participating projects beyond the end of the calculation period in the PRS.

The water depletion schedule contained in the FY 1989 Integrated Projects Preliminary PRS included the assumption that water available for power production will decrease at the scheduled inservice date of each authorized participating project regardless of how uncertain construction of some of the projects may be. The Rate Order PRS has been revised to omit the water depletions associated with those participating projects whose construction is uncertain and whose repayment is scheduled beyond the calculation period of the PRS.

c. Twelve customers and CREDA stated no additional water depletions should be assumed after FY 2005.

Response: Western and Reclamation believe that FY 2005 is too early to eliminate additional depletions from the PRS. For example, most of the Animas-La Plata Participating Project, and significant parts of the CUP's Bonneville Unit, are not anticipated to be fully operational until FY 2007. The Upper Basin States prepare depletion schedules in 10-year increments; i.e., 1990–2000, 2000–2010, etc. To coordinate depletions for the participating projects with the States' schedules, additional depletions after FY 2010 do not affect the rates.

This modification resulted in a decrease of approximately 0.50 mills/kWh in the combined Integrated Projects firm power rate.

7. Miscellaneous comments were received as follows:

a. Relating to the apportionment of net CRSP power revenue among the States of the Upper Basin:

(1) Sixteen customers and CREDA expressed their discontent with the repayment by power users of the irrigation-related investment in the participating projects fivefold, based upon the out-dated assumption of substantial future State-related water developments.

Response: The CRSP Act includes the provision that CRSP power revenues, less O&M and other operating expenses and that amount of storage unit investment assigned to power for repayment, shall be apportioned among the Upper Basin States as follows:

Colorado—46.0 percent
New Mexico—17.0 percent
Utah—21.5 percent
Wyoming—15.5 percent

The apportioned revenues are to be used to repay the U.S. Treasury for the federally financed portion of the participating projects using Colorado River water. Because the construction costs in Utah determine the requirements for apportioned revenues, the necessary total revenues equal

approximately 4.65 times the amount required for actual participating project construction costs. Since revenue apportionment is required by the CRSP legislation, Western will continue to provide for this purpose unless and until the law is changed.

(2) Two customers requested that Western and Reclamation seek the cooperation of the Upper Basin States in holding down the costs associated with the apportionment of revenues.

Response: Western's obligation is to assure that the revenues required under the CRSP Act are deposited in the U.S. Treasury. The total amount necessary is a function of that part of the cost of the participating projects assigned to power for repayment by Reclamation. Section 5(e) of the CRSP Act provides that the funds apportioned to each of the Upper Basin States for the repayment of the construction costs of participating projects in that State cannot be used in any other Basin State without the consent of the legally constituted authorities in the State to which the funds are apportioned. Western has discussed this matter in meetings with the Upper Basin States and at this time they have not consented to a different use of the apportioned funds.

(3) The UCRC commented that the rate increase is necessary to assure money for State-related water development, within the intent and purposes of the CRSP Act.

Response: Western agrees with the UCRC comment.

b. Relating to environmental concerns:

Background: In December 1988, NWF and several other environmental groups filed a lawsuit against Western contending, among other issues, that Western did not comply with the NEPA in completing its Integrated Projects post-1989 marketing criteria. Western has announced its intent (55 FR 12550, April 4, 1990) to prepare an EIS relating to the post-1989 marketing criteria. The court has enjoined Western from implementing the Integrated Projects post-1989 marketing criteria and ordered the continuation of power sales at the same total levels they had been prior to September 30, 1989, on an interim basis, until the marketing criteria EIS is completed.

Additionally, Reclamation is preparing an EIS on the effects of Glen Canyon Dam operations on the downstream environment of the Grand Canyon.

(1) Four Customers said that the lawsuit and Western's subsequent interim allocation of Integrated Projects firm power have left some customers with inadequate power supplies.

Response: While this comment does not directly apply to this rate adjustment, it does provide a foundation for understanding subsequent comments.

Several new Integrated Projects firm power customers were due to begin receiving power when the post-1989 contracts became effective. In many cases, arrangements with alternative suppliers had been terminated in anticipation of the receipt of Integrated Projects power. The temporary order suspending these contracts meant that these customers would have been without any power supplies to replace those that were lost. The court accepted Western's recommendation that the most equitable distribution of the available Integrated Projects resource required prorating of the power between the old and new customers. The existing customers with previous power allocations received a slight reduction in the amount of power furnished to them. The power thus saved was distributed to the new, post-1989 customers. The lawsuit has meant that Integrated Projects firm power customers are not receiving all of the power identified for their use in Western's Final Post-1989 Allocation of Power (52 FR 10620, April 2, 1987).

(2) Two customers stated that the lawsuit and the resulting injunction have caused rate increases for some Integrated Projects firm power customers.

Response: Western recognizes to the extent that Integrated Projects firm power customers receive less power than they had anticipated and the shortfall must be replaced with purchases from other, presumably more expensive, sources that the suit has resulted in higher costs to those customers.

(3) Two customers suggested that the Glen Canyon EIS be paid for with nonreimbursable appropriated funds since all water users are affected by the outcome.

Response: Western has encouraged Reclamation to seek appropriated funds to pay in part for the Glen Canyon EIS. It has been longstanding Reclamation policy that studies of operations are considered part of O&M.

Until a change is made in either that policy or congressional authorization, Reclamation's opinion that the Glen Canyon EIS should be considered an O&M expense will remain reflected in the Integrated Projects PRS's including the Rate Order PRS.

Since there is a possibility that Congress may act to make some or all of the costs associated with the Glen Canyon environmental studies nonreimbursable, Western is providing for that possibility as discussed in the earlier section entitled "Provision for Rate Reduction" and in the rate schedule.

(4) One customer stated that Western cannot reduce the customer's power allocation without an Act of Congress.

Response: All Integrated Projects customers' power allocations, and the contract commitments that are based on the allocations, share same legal status. Allocations are administrative decisions made by Western and reduction to contract commitments are allowed by contracts currently in effect.

(5) One customer commented that the Glen Canyon EIS may result in a change in operations of Glen Canyon Dam, thereby reducing the power available for purchase.

Response: The Colorado River Compact of 1922 guarantees that a minimum of 75 million acre-feet of Colorado River water be available to the States located below Lee Ferry, Arizona, in any consecutive 10-year period. The current Annual Operating Plan for the Colorado River requires tht 7.5 million acre-feet be delivered annually. The Mexican Water Treaty and Protocol of 1944 guarantees the delivery of at least 1.5 million acre-feet of Colorado River water per year to the United Mexican States. Enought water will be released through Glen Canyon Dam to meet these obligations. It is not possible yet to identify the effect the Glen Canyon EIS will have upon power production. Since a specified amount of water must reach the lower Colorado River, an actual reduction in total energy generation is unlikely. However, the time of day when power is available could change, thereby affecting marketable capacity.

(6) NWF requested that at least $1 million annually be included in the Rate Order PRS as an ongoing expense for the completion of the Glen Canyon EIS and mitigation activities for the life of the PRS.

Response: Reclamation believed at the time the FY 1989 Integrated Projects PRS was being prepared that sufficient funds had been budgeted for the completion of the Glen Canyon EIS. Since that time, additional cost have been identified for FY's 1991 ($6.8 million) and 1992 ($1.0 millions), and they have been included in this Rate Order. As additional costs are budgeted for years beyond 1992, they will be inserted into the Integrated Projects PRS.

(7) NWF suggested that Western complete an EA of the proposed firm power rate increase.

Response: Western has done so.

(8) NWF suggested that Reclamation and Western cease delaying repayment for participating projects during a developing period.

Response: The repayment period does not begin until after the end of the development period for particiating projects as specified in section 5(e) of the CRSP Act (43 U.S.C., section 620(e)). The use of the development period is established in Reclamation law and can only be changed by new legislation.

(9) NWF stated that Western should end the practice of repaying the highest interest-bearing investment first.

Response: All power marketing administration are instructed in DOE Order RA 6120.2 (section 8.c.(3)) to apply net revenues to the highest interest-bearing investment first. This has been interpreted to mean that the highest interest-bearing investment is repaid first when it results in the lowest power rates consistent with sound business principles. When another order of repayment will meet all obligations with a lower power rate, that order of repayment is used as provided in the Western/Reclamation Agreement.

c. The following comments relate to the economic hardship that the rate increase will cause customers, either through a loss of load or through increased expenditures. Western prepared an EA and concluded there would be no significant impact. However, Western realizes that some customers may endure a hardship or be in a less competitive position due to this rate action. In response, Western's SLCA is currently expanding its C&RE program. Through this program, Western provides direct technical assistance and experts in the electrical industry to assist customers, sponsors workshops, and loans equipment to customers at no cost. The goals of the C&RE program include assisting customers in saving energy, reducing their costs, improving system efficiency, and staying competitive.

(1) Fifteeen customers and CREDA requested that the proposed rate increase by implemented over a period of 2 or 3 years rather than all at once.

Response: Western has considered the advisability of a stepped rate increase; i.e., one put in place over a period of 1 or 2 years. The suggestion was based upon the size of the rate increase contained in the FY 1989 Integrated Projects Preliminary PRS, approximately 46 percent.

Because of the projected cash-flow deficit in the Basin Fund in FY's 1991 and 1992, Western is obligated to implement a full-rate adjustment as soon as possible in accordance with the CRSP Act. Since the cash-flow problem is expected at last only 2 years, the Integrated Projects rate will be higher in the first 2 years than in the last 3 years.

(2) Eleven customers stated that the proposed rate increase would result in financial hardship to their service areas, regarding industrial development, the profitability of farms and small businesses, and the impact upon economically deprived regions and individuals.

Response: Western recognizes the potential financial hardship that may be caused by the proposed rate increase. However, the increase is necessary to comply with Western's legal obligations. Delays in rate adjustments and inadequate recovery of costs threaten the financial security of the Integrated Projects.

Western analyzed the economic impact of this rate increase in an EA. Based on a ratio of Integrated Projects resources to total resources, representative customer groups were identified. The impact of the rate increase on retail rates in these groups ranged from 0.44 percent to 9.68 percent. In addition, Western evaluated the impact of the rate increase on the retail rates of specific customers who obtain a large portion of their power from the Integrated Projects. The retail rates of these customers may increase as much as 9.0 percent. A more detailed summary of the EA findings is provided in the Environmental Evaluation section of this rate order.

(3) Three customers commented that the proposed rate increase will force their sales rates higher than their competition, resulting in a loss of load which they serve.

Response: Since the Integrated Projects are not the sole power source for most of Western's customers, the rate increase will be blended with cost from other suppliers.

Western concluded in its FONSI that even retail rate increases as high as 9.68 percent would not significantly alter the ability of representative customer groups to compete for load. While Western is sympathetic to the comment, Western's obligation is to set rates at levels that repay the project.

(4) One customer said that the proposed rate increase, in addition to the recent rise in the transmission rates charged by the CRSP, will result in financial hardship in his community.

Response: Western understands and regrets any economic problems caused by the noted rate increases, but both increases are necessary to meet Western's repayment obligations.

The interrelation of the CRSP firm transmission rate and the Integrated Projects firm power rate is addressed elsewhere in this discussion section.

(5) One customer stated that the proposed rate increase will force their retail rates high enough to be considered market-based.

Response: Western believes that Integrated Projects power, even after the implementation of the proposed rate increase, will still be less expensive than most alternative sources of power. Since the proposed rates are necessary to assure the financial integrity of the Inegrated Projects, Western does not have the prerogative to lower them.

d. Regarding the procedures used by Western to complete a PRS:

(1) CREDA suggested that Western reduce the cost-evaluation period used within its PRS's to 2 future years as is done at the Bonneville Power Administration. An additional 15 customers concurred.

Response: The 5-year cost-evaluation period used by Western is set forth in DOE Order RA 6120.2 (section 10.c.) and has been in use throughout Western for many years. This methodology is accepted by FERC and is considered valid for all Western projects. To use a 2-year cost-evaluation period would limit FERC's approval of the rate to only 2 years. In periods of stable rates such as experienced from 1983 through 1989, Western would still have had to go through the public rate process every 2 years resulting in unnecessary expense to the rate payers. It would also require Western to start a new rate process as soon as one was complete because the process takes approximately 18 months to complete.

(2) One customer said that the cost of replacements is essentially expensed in the FY 1989 Integrated Projects Preliminary PRS. The customer suggested that replacements should be capitalized in the PRS over their useful life.

Response: DOE Order RA 6120.2 states that all replacements in every PRS will be capitalized over the statistically probable life of the replacement or over 50 years, whichever is less. This procedure is followed for the Integrated Projects PRS and for all of its component PRS's.

Since replacements are capitalized at current market rates of interest, it is almost always less expensive to the rate payer to pay off these costs as quickly as possible. The power rates necessary to assure net revenues for apportionment to the Upper Basin States in the 21st century are such that most replacements are estimated to be paid for in the year they go into service, saving the rate payer many extra dollars

in interest expense. Because of the critical cash-flow situation in the Basin Fund, no payments are made on replacements in FY's 1990 or 1991 in the Rate Order PRS.

e. One customer suggested that costs and revenues for fuel replacement sales should be continued beyond FY 2004 in the Rate Order PRS.

Response: Net revenues earned from fuel replacement/economy energy sales are dependent upon many variable factors. Because they are so variable, it is Western's practice not to rely upon them for repayment of investment. This conservative approach is used in the Rate Order PRS and forms the basis for the assumption that all revenue from fuel replacement and economy energy sales ends in FY 2004. This timeframe is consistent with the life of the existing marketing criteria, and reflects the possibility of marketing the then-existing resources in a different manner after FY 2004. Additional nonfirm energy revenue may be earned after FY 2004, but that eventuality is speculative and uncertain. When and if the revenue appears, it will be applied to Integrated Projects obligations at that time.

f. One customer commented that the relative ability of water users to make repayment needs to be reevaluated.

Response: According to Reclamation law and policy, project costs are allocated to the various purposes for which the project was built. Reimbursable costs are repaid with interest by the appropriate beneficiaries with the exception of costs allocated to irrigation.

Costs of CRSP storage units allocated to irrigation are repaid from Basin Fund revenues without interest. Participating project costs allocated to irrigation are repaid by irrigators without interest. Project capital costs above the ability of irrigators to repay are repaid from Basin Fund revenues.

The irrigators' ability to repay is determined by Reclamation before the construction of the project, and that amount becomes the contractual obligation of the irrigation district to the Federal Government. M&I water users also enter into contracts with the Federal Government to repay their allocated costs.

Since all project repayment reimbursable by beneficiaries is included in contracts, Reclamation believes it would be inappropriate to alter these repayment commitments unless these contracts allow for such a reevaluation or are reopened.

g. The UCRC stated that a large portion of the Federal investment required for development of the participating projects is to be recovered from the sale of power generated by facilities within those projects.

Response: While the CRSP Act does provide for investment in each participating project to be repaid by revenues produced from those projects, most projects are anticipated to have negligible income from nonpower sources. As presently planned, the only revenue-producing participating project power facilities are at Fontenelle Powerplant in the Seedskadee Project. Consequently, power from Fontenelle Powerplant is the only participating project power resource included in the Rate Order PRS. Other than revenue from water sales, these projects must be repaid from power revenues from storage unit powerplants.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 (NEPA), Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and the DOE Guidelines published in the **Federal Register** on December 15, 1987 (52 FR 47662), Western has followed the process described below in conducting the environmental evaluation of the rate adjustment.

Section D of the DOE Guidelines states that the level of documentation required under NEPA for rate increases of power marketing administrations depends on the size of the rate increase as it relates to the rate of inflation since the last rate increase. Because the last CRSP rate increase was June 1, 1983, and because the Rio Grande and Collbran Projects rates were reduced to match the CRSP rate at project integration on October 1, 1987, the last rate increase is considered to have been on June 1, 1983. During the period June 1, 1983, to May 1, 1990, the Consumers Price Index (CPI–U) has increased by 22.85 percent. As the proposed rate action constitutes a 46-percent increase, Western prepared an environmental assessment (EA) to address the potential effects of the rate increase.

Western developed four alternatives for assessment in the EA. Three other alternatives were briefly discussed but not assessed in the EA.

Alternative A would consist of an energy charge of 7.25 mills/kWh and a capacity charge of $3.08/kW-month. This would result in a combined rate of 14.50 mills/kWh, a 46-percent increase. Alternative A is the rate that was originally proposed at the November 21, 1989, public information forum.

Alternative B would consist of an energy charge of 6.5 mills/kWh and a capacity charge of $2.76/kW-month, for a combined rate of 13.00 mills/kWh. In addition, there would be an adder of 1.5 mills/kWh on the base rate for a total combined rate of 14.50 mills/kWh only during the first 2 years. Alternative B is the provisional rate identified in this rate order to be effective October 1, 1990. Because alternatives A and B would have the same economic impact during FY's 1991 and 1992, the EA evaluated the impacts beginning in FY 1993 so that there would be a meaningful comparison among the alternatives. The base rate in alternative B is a 31-percent increase over the current Integrated Projects rate.

Alternative C would consist of an energy charge of 7.58 mills/kWh and a capacity charge of $3.21/kW-month for a combined rate of 15.15 mills/kWh, a 52.7-percent increase. Alternative C was developed in response to two comments received from interested parties. Alternative C includes $1 million for environmental study and mitigation expenses for all years and a straight-line amortization repayment schedule on all construction, including irrigation and participating projects, within 5 years.

Alternative D is the No-Action Alternative. The current rates would remain in place for another 5 years. Alternative D is an energy charge of 5.0 mills/kWh and a capacity charge of $2.09/kW-month, for a combined rate of 9.92 mills kWh. This rate is also the economic baseline used to evaulate the impacts of alternatives A, B, and C.

Western conducted an economic assessment of the effect of the four alternatives on wholesale customers and on their retail consumers. Both levels of impact were considered because Western assumed any increase in costs would be passed on to retail or end-use consumers.

Retail rate impacts of the alternatives were analyzed for three customer types: Representative, rate sensitive, and irrigation dominant. For each customer type, the percentage increase in rates was used to calculate the economic effects of each alternative. In all cases, alternative D resulted in no change in retail rates.

Representative customers were divided into three groups based on the percentage of total resource supplied by the Integrated Projects.

Customer A receives 60 percent of its total resource from the Integrated Projects, customer B, 30 percent, and customer C, 5 percent. For customer A, alternative A resulted in a 9.48-percent increase in retail rates, alternative B a 6.38-percent increase, and alternative C a 10.82-percent increase. For customer B, alternative A resulted in a 3.26-percent increase in retail rates, alternative B a

2.19-percent increase, and alternative C a 3.72-percent increase. For customer C, alternative A resulted in a 0.43-percent increase in retail rates, alternative B a 0.29-percent increase, and alternative C a 0.49-percent increase.

The impacts of the internatives on two rate-sensitive customers, those that are dependent on the Integrated Projects for most of their resources, was also assessed. Those customers are the cities of Center, Colorado, and Truth or Consequences, New Mexico (TorC). For Center, alternative A resulted in an 8.42-percent increase in retail rates, alternative B a 6.71-percent increase, and alternative C a 9.16-percent increase. For TorC, alternative A resulted in an 8.88-percent increase in retail rates, alternative B a 7.28-percent increase, and alternative C a 9.57-percent increase.

Irrigation dominant customers are those whose loads are mostly due to irrigation pumping. An electric rate increase to these customers is passed to farmers in increased water costs. The effect of the alternatives was determined for two of these customers, Flowell Electric Association, Inc. (Flowell), and Silt Water Conservancy District (Silt). For Flowell, alternative A resulted in a 0.57-percent increase in pumping costs, alternative B a 0.38-percent increase, and alternative C a 0.65-percent increase. For Silt, alternative A resulted in a 0.64-percent increase in pumping costs, alternative B a 0.43-percent increase increase, and alternative C a 0.73-percent increase.

Western has proposed both a LAP firm power rate increase and a LAP firm transmission service rate increase. Because some customers receive power from both LAP and the Integrated Projects, the cumulative impacts of these rate actions was assessed. Of the three customers evaluated in the EA, Ft. Morgan, Colorado, would be most affected. For Ft. Morgan, the LAP rate increases and alternative A resulted in a 9.93-percent increase in retail rates, the LAP rate increases and alternative B an 8.31-percent increase, and the LAP rate increases and alternative C a 10.62-percent increase.

Some customers will also be subject to a proposed increase in the Public Service Company of Colorado (PSCO) firm transmission rate. The impact of this rate increase on Center, along with the LAP rate increases and the Integrated Projects alternatives was determined. For Center, the cumulative impact of all the proposed rate actions on retail rates under alternative A resulted in a 9.35-percent increase in retail rates, under alternative B a 7.64-percent increase, and under alternative C a 10.09-percent increase.

Silt receives all of its power from the Integrated Projects and it is all subject to the PSCO transmission-rate increase. For Silt, the impact on pumping costs of alternative A and the PSCO rate action would be a 1.46-percent increase, alternative B and the PSCO rate action would be a 1.26-percent increase, and alternative C and the PSCO rate action would be a 1.56-percent increase.

Western also assessed the potential effect of each alternative on fossil-fuel use and energy conservation. No induced switching to fossil fuels is anticipated for any of the alternatives solely because of the proposed rate increase, as the alternative fuel costs of Western's customers are generally higher than the rates set forth in Rate Schedule SLIP–F2. Because no fuel switching is anticipated, no direct impacts on the physical environment are anticipated.

The analysis in the EA also shows that the retail rate impacts on end use consumers would have insignificant indirect impacts on the physical environment. Energy conservation is expected to increase insignificantly for alternatives A, B, and C.

Based on the information in the EA, DOE issued a FONSI on the proposed Integrated Projects rate action on August 10, 1990. Copies of the EA and FONSI are available from Western's Salt Lake City, Utah; Golden, Colorado; and Washington, DC., offices. These office addresses are provided elsewhere in this rate order.

Executive Order 12291

DOE has determined that this is not a major rule within the meaning of the criteria of section 1(b) of Executive Order 12291. In addition, Western is exempt from sections 3, 4, and 7 of that order, and therefore will not prepare a regulatory impact statement.

Availability of Information

Information regarding this rate adjustment, including studies, the EA and FONSI, comments, and other supporting material is available for public review in the SLCA Office, Western Area Power Administration, 257 East 200 South, Suite 475, Salt Lake City, Utah 84111; Division of Marketing and Rates, Western Area Power Administraiton, 1627 Cole Boulevard, Golden, Colorado 80401; and the Office of the Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Submission to FERC

The rates herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I confirm and approve on an interim basis, effective October 1, 1990, Rate Schedule SLIP–F2. This rate schedule shall remain in effect on an interim basis pending FERC confirmation and approval of it or a substitute rate on a final basis for a period of 5 years, or until it is superseded.

Issued in Washington, DC, August 27, 1990.

W. Henson Moore,

Deputy Secretary.

Rate Schedule SLIP–F2

(Supersedes Schedule SLIP–1)

Salt Lake City Area Integrated Projects Arizona, Colorado, Nevada, New Mexico, Utah, Wyoming

Rate Schedule for Wholesale Firm Power Service

Effective. Beginning October 1, 1990, through September 30, 1995.

Available. In the Salt Lake City Area Integrated Projects service area.

Applicable. To wholesale power customers for firm power supplied through one meter at one point of delivery or as otherwise established by contract.

Character. Alternating current, 60 hertz, 3-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate

Dates effective	Energy charge (mills/kWh)	Demand charge per kW of billing demand
10/01/90 through 09/30/92 [1]	7.25 (See attachment for provision for adjustment to the cash-flow adder).	$3.08
10/01/92 through 09/30/95	6.50	$2.76

[1] Included within these charges are adders of .75 mills/kWh and $.32 kW-month that are necessary to meet the cash-flow needs of the Integrated Projects.

Billing Demand

The billing demand will be the greater of (1) the highest 30-minute integrated demand measured during the month up to, but not in excess of, the delivery obligation under the power sales contract, or (2) the contract rate of delivery.

Adjustments for Transformer Losses

If delivery is made at transmission voltage but metered on the low-voltage side of the transformer, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

Adjustment for Power Factor

The customer will be required to maintain a power factor at all points of measurement between 95-percent lagging and 95-percent leading.

Rate Schedule SLIP-F2

(Supersedes Schedule SLIP-F1) Attachment

Salt Lake City Area Integrated Projects Arizona, Colorado, Nevada, New Mexico, Utah, Wyoming—Formula for Adjustment to Cash-Flow Adder Date Component

In the event that there is a reduction to the amount that the power users must pay to cover the unbudgeted environmental costs that have been projected in the "Cash Flow Analysis" of Table I of Rate Order No. 45, a reduction in the rate for FY's 1991 and 1992 may take place in accordance with these principles:

Western may reduce the adder component contained within the monthly rates for energy and demand as specified in Rate Schedule SLIP-F2 for FY's 1991 and 1992. The basis for any adjustment would be the ratio of the net amount of the reduction in the revised estimate of cash-flow requirements to the amount of the present estimate of cash-flow requirements, times the adder component in the monthly rates for energy and demand as specified in Rate Schedule SLIP-F2 for FY's 1991 and 1992. Any adjustment would be based on the best information available at the time.

The reduction may be effective on the first day of the month after the day of enactment or when the legislation becomes effective, whichever is later.

The resulting rates will not be lower than the rates for the subsequent rates for FY's 1993–1995.

The Federal Energy Regulatory Commission and the customers will be notified in writing prior to the implementation of any reduction in the rate.

[FR Doc. 90-21357 Filed 9-11-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3829-2]

Extension of Comment Period and Rescheduling of Public Hearing on the Report to Congress on Special Wastes From Mineral Processing

AGENCY: Environmental Protection Agency.

ACTION: Extension of comment period and rescheduling of public hearing.

SUMMARY: This notice announces an extension of the comment period and the rescheduling of the public hearing on the recently released Report to Congress on Special Wastes from Mineral Processing (see 55 FR 32135; August 7, 1990).

The Agency is extending the comment period in reponse to a request from the American Mining Congress, who pointed out that the comment period for the Report to Congress overlapped with those for several other key Agency activities. In fact, the original date for the public hearing on the Report to Congress (September 25, 1990) is the same date as a hearing on the Agency's proposed rule on Maximum Contaminant Level Goals under the Safe Drinking Water Act.

The comment period, which was originally scheduled to end September 28, 1990, has been extended until October 19, 1990. The public hearing originally scheduled for September 25, 1990, has been rescheduled for October 17, 1990.

The Report to Congress contains detailed studies of 20 special wastes from mineral processing operations that the Agency previously determined are within the scope of the exemption from hazardous waste regulations provided by Section 3001(b)(3)(A)(ii) of the Resource Conservation and Recovery Act (RCRA); this exemption is often referred to as the Mining Waste Exclusion. The report also presents two alternative decision-making approaches and tentative findings under each approach with respect to whether RCRA subtitle C regulation of these wastes is warranted. The Report to Congress is comprised of three volumes:

Volume I—Summary and Findings:
Volume II—Methods and Analyses; and
Volume III—Appendices.

The Agency solicits public comments on the Report, the alternative decision-making approaches and the tentative findings presented therein, and the specific types of requirements that might be appropriate for wastes that EPA determines should be regulated under RCRA subtitle D or other regulatory approaches, especially under the flexibility provided by RCRA § 3004(x).

DATES: EPA will accept public comments on the Report to Congress on Special Wastes from Mineral Processing until October 19, 1990. The Agency will also hold a public hearing on the Report on October 17, 1990.

ADDRESSES: Requests to speak at the public hearing should be submitted in writing to the Public Hearing Officer, Office of Solid Waste, (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The public hearing will be at the Holiday Inn Crowne Plaza Hotel at Metro Center, 1325 G Street NW., Washington, DC, 20005. The hearing will begin at 9 a.m. with registration beginning at 8:30 a.m. The hearing will end at 5 p.m. unless concluded earlier. Oral and written statements may be submitted at the public hearing. Persons who wish to make oral presentations must restrict them to 15 minutes, and are requested to provide written comments for inclusion in the official record.

Copies of the full Report are available for inspection and copying at the EPA Headquarters library and at the RCRA Docket in Washington, DC, and at all EPA Regional Office libraries. Copies of the full report can be purchased from the National Technical Information Service (NTIS) (call (202) 487-4650 or (800) 336-4700). When calling, refer to NTIS Document No. PB-90-258-492. Copies of the Summary and Findings (Volume I) can be obtained by calling the RCRA/Superfund Hotline (800) 424-9346 or (202) 382-3000.

Those wishing to submit public comments for the record must send an original and two copies of their comments to the following address: RCRA Docket Information Center (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Place the docket number F-90-RMPA-FFFFF on your comments.

The OSW docket is located in room M2427 at EPA headquarters. The docket is open from 9 a.m. to 4 p.m. Monday through Friday, except for Federal holidays. Members of the public must make an appointment to review the docket materials. Call (202) 475-9327 for appointments. Copies cost $0.15/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline at (800) 424-9346 or (202) 382-3000; for technical information contact Bob Hall, U.S. Environmental Protection Ageney, 401 M Street, SW., Washington, DC, 20460, (202) 475-8814.

Dated September 4, 1990.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 90-21382 Filed 9-11-90; 8:45 am]

BILLING CODE 6560-50-M

[OPP-66142; FRL-3800-2]

Pesticide Products Containing Phenylmercuric Acetate; Receipt of Requests for Voluntary Cancellation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of pesticide cancellations.

SUMMARY: Based on the risks associated with indoor use of paints containing mercury, EPA recently announced a series of pesticide cancellations and amendments which have eliminated all use of mercury biocides in interior paints. EPA has also expressed concerns regarding the potential risks associated with use of mercury compounds in other interior products such as joint compounds, adhesives, and plasters. The only remaining registrant of mercury biocides labeled for these miscellaneous interior uses has requested voluntary cancellation of the registrations for these products. All stocks of affected mercury biocides, including stocks in the hands of end-users, must be stickered by October 15, 1990, with language reducing the maximum use rate and requiring a specific precautionary statement on products manufactured from the biocides. Existing stocks of cancelled mercury products which have been properly stickered may be sold and used until June 27, 1991.

DATES: The cancellation order incorporated in this notice will become effective September 13, 1990. Existing stocks of products cancelled pursuant to this notice must be stickered with new label language by October 15, 1990. Existing stocks of such cancelled products which have been properly stickered may be sold and used until June 27, 1991.

FOR FURTHER INFORMATION CONTACT: Beth Edwards, Special Review Branch, Special Review and Reregistration Division (H7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 3rd Floor, 2805 Jefferson Davis Highway Arlington, VA, (703) 308-8010.

SUPPLEMENTARY INFORMATION:

I. EPA Conclusions Concerning Use of Mercury in Interior Products

Following receipt of reports concerning a 4-year old child who developed acrodynia (a rare form of mercury poisoning) after his home was painted with paint containing mercury and a followup investigation by the Centers for Disease Control and the State of Michigan of mercury levels in other homes painted with similar paint, EPA initiated a comprehensive review of the risks and benefits associated with the use of mercurial compounds in paints and coatings. After evaluating the available evidence concerning exposure to mercury resulting from use in paints and coatings, toxicity of mercury and mercury compounds, and availability of alternative biocides, EPA concluded that the continued use of mercurial compounds in the manufacture of interior paints and coatings would present an unreasonable risk of adverse health effects. EPA also determined that continued use of mercury in the manufacture of other miscellaneous interior products such as joint compounds, adhesives, and plasters would present qualitatively similar risks which could only be quantified after development and submission of additional data.

As a result of discussions with the registrants of mercury products labeled for use in paints and coatings, the registrants agreed to rapidly eliminate use of mercury biocides in interior paints and coatings and to require that exterior paints and coatings containing mercury biocides be labeled with a warning against interior use. These changes were effectuated by conditional amendments to specific registrations and requests for voluntary cancellation of other registrations, as described in a prior notice published in the **Federal Register** of June 29, 1990 (55 FR 26754).

As part of the same discussions, EPA and Cosan Chemical Corporation ("Cosan"), the registrant of certain mercury products labeled exclusively for miscellaneous interior uses, discussed at some length the data which would be required to support continued registration of such products. Ultimately, Cosan decided to cease production of such products and to request voluntary cancellation of the registrations rather than committing to develop the required data. This notice is being published to advise the public of the changes in sale, distribution, and use to be implemented for the products to be cancelled, and to meet the legal requirements established by FIFRA section 6(f)(1), 7 U.S.C. section 136d(f)(1).

II. Requests for Voluntary Cancellation

Cosan has requested voluntary cancellation pursuant to FIFRA section 6(f)(1) of its registrations for JTA-20, EPA Registration No. 8489-3, and JTA-10, EPA Registration No. 8489-10, products containing phenylmercuric acetate which are presently labeled for use in the formulation of products such as joint compounds, textures, adhesives, and plasters. EPA intends to grant these requests for voluntary cancellation effective on September 13, 1990.

III. Existing Stocks

EPA has decided that it will permit continued sale and use of existing stocks of JTA-20 and JTA-10 until June 27, 1991, subject to specific mandatory terms and conditions. FIFRA section 6(a)(1), 7 U.S.C. section 136d(a)(1), provides that EPA may permit continued sale and use of existing stocks of cancelled products for specific uses and subject to specific conditions, if EPA determines "that such sale or use is not inconsistent with the purposes of this Act and will not have unreasonable adverse effects on the environment." The terms and conditions which will govern sale and use of remaining stocks of JTA-20 and JTA-10 are identical to the terms and conditions which EPA would have required during the pendency of data development if Cosan had committed to develop the data necessary to support continued registration of either of these products. Cosan has not produced JTA-10 for years and believes that no stocks of JTA-10 remain in the hands of end-users, but has elected to commit to the required terms and conditions for that product as a precaution in the event that some small quantity of the product remains.

Cosan has submitted to EPA the text for a sticker for each affected biocide which includes provisions that: (1) Expressly limit use to building products adhesives, drywall compounds, and acoustical plasters and prohibit use in any other interior paint or coating, (2) reduce the maximum permissible application rate to 120 ppm mercury in the ready-to-use product, (3) limit use to only those building products adhesives, drywall compounds, and acoustical plasters which are labeled with a specific precautionary statement, and (4) state that sale, distribution, and use of the mercury product will be unlawful after June 27, 1991.

The cancellation order requires the sticker incorporating the new label requirements to be affixed to all stocks of each product distributed or sold by

Cosan or any other person on or after September 17, 1990. The cancellation order also will require Cosan to deliver stickers by September 17, 1990, to all end-users who are holding inventory of each product, and will provide that stocks of each product remaining in the inventory of end-users may not be lawfully used after October 15, 1990, unless the end-user has affixed the new sticker to the product and all use of the product is in full conformity with the instructions on the sticker.

IV. Cancellation Order

Effective on September 13, 1990, the registrations for the following pesticide products are cancelled pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. section 136d(f)(1):

Registrant	Product	EPA Registration No.
Cosan Corporation	Cosan JTA-20	8489-3
Cosan Corporation	Cosan JTA-10	8489-10

Effective on September 13, 1990, it shall be unlawful under FIFRA section 12(a)(1)(A) and/or FIFRA section 12(a)(2)(K), 7 U.S.C. sections 136j(a)(1)(A), 136j(a)(2)(K), for any person to distribute or sell, or to use for any pesticidal purpose, either of these cancelled products except in full compliance with all of the provisions concerning existing stocks set forth below.

The Agency has determined that existing stocks of each pesticide product cancelled by this order may be sold, distributed, and used until June 27, 1991, subject to all of the following mandatory terms and conditions. For each cancelled product, the registrant has submitted as part of its request for voluntary cancellation under FIFRA section 6(f)(1) the text for a sticker which includes label provisions: (1) Limiting use of the pesticide product to building products adhesives, drywall compounds, and acoustical plasters and prohibiting use of the pesticide product in any other interior paint or coating, (2) reducing the maximum permissible application rate for the pesticide product to 120 ppm mercury in the ready-to-use manufactured product, (3) limiting use of the pesticide product to only those building products adhesives, drywall compounds, and acoustical plasters which are labeled with a specific precautionary statement, and (4) stating that sale, distribution, and use of the pesticide product will be unlawful after June 27, 1991. Effective on September 17, 1990, no person shall distribute or sell in any State any quantity of a pesticide product cancelled by this order unless the approved sticker for that product has been affixed to each container of the product. Effective on October 15, 1990, no person shall use in any State any quantity of a pesticide product cancelled by this order unless the approved sticker for that product has been affixed to each container of the product and such use is in full conformity with all of the instructions on the sticker. For each cancelled product, the registrant shall by September 17, 1990, deliver to, and verify receipt by, each customer or other end-user holding inventory of the product: (1) Quantities of the approved sticker for that product which are sufficient to affix the sticker to each container of the product in the customer's or end-user's inventory, and (2) a letter advising the customer or end-user of the effective dates for the revised labeling on the stickers and instructing the customer or end-user to affix the sticker to each container of the product on or before October 15, 1990.

Dated: September 4, 1990.

Edwin F. Tinsworth,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 90-21381 Filed 9-11-90; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: New Collection.

Title: Disaster Assistance After-Action Report.

Abstract: This report summarizes major coordination, management problems and issues of a disaster operation, with lessons learned and recommendations to improve coordination and management in future disasters.

Type of Respondents: State or local governments, Federal agencies or employees, Non-profit institutions.

Estimate of Total Annual Reporting and Recordkeeping Burden: 208.

Number of Respondents: 26.

Estimated Average Burden Hours per Response: 8.

Frequency of Response: 45 days after closing of Disaster Field Office.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395-7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: August 29, 1990.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 90-21394 Filed 9-11-90; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-878-DR]

Amendment to Notice of a Major Disaster Declaration; Illinois

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA-878-DR), dated August 29, 1990, and related determinations.

DATES: August 31, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Illinois, dated August 29, 1990, is hereby amended to add Public Assistance to the major disaster declared by the President in his declaration of August 29, 1990. It will be made available in the following areas:

Will County.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Robert H. Volland,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-21390 Filed 9-11-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-878-DR]

Amendment to Notice of a Major Disaster Declaration, Illinois

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA-878-DR), dated August 29, 1990, and related determinations.

DATES: September 2, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Illinois, dated August 29, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 29, 1990:

Kendall County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-21391 Filed 9-11-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-878-DR]

Major Disaster and Related Determinations, Illinois

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA-878-DR), dated August 29, 1990, and related determinations.

DATES: August 29, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated August 29, 1990, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Illinois, resulting from tornadoes on August 28, 1990, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be provided, if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total elibible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint John D. Swanson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this declared major disaster:

Will County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 90-21392 Filed 9-11-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-877-DR]

Major Disaster and Related Determinations, Wisconsin

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA-877-DR), dated August 30, 1990, and related determinations.

DATES: August 30, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated August 30, 1990, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Wisconsin, resulting from severe storms and flooding beginning on August 17, 1990, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Wisconsin.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be provided at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ronald Buddecke of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Wisconsin to have been affected adversely by this declared major disaster:

Monroe County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 90-21393 Filed 9-11-90; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Brazil/U.S. Atlantic Coast

The Federal Maritime Commission hereby gives notice of the filing of the

following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212–010027–027.

Title: Brazil/U.S. Atlantic Coast Agreement.

Parties:

Companhia de Navegacao Lloyd Brasileiro.
Companhia de Navegacao Maritima Netumar.
American Transport Lines, Inc.
Empresa Lineas Maritimas Argentinas S.A.
A. Bottacchi S.A. de Navegacion C.F.I.I.
Van Nievelt, Goudriaan and Co. B.V.
Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft Eggert & Amsinck (Columbus Line).

Synopsis: The proposed amendment would increase the number of ports in Brazil at which the parties may call to satisfy their port call obligation at minor Brazilian ports. It would also increase the poll-carrying adjustment for certain commodities.

Dated: September 7, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90–21353 Filed 9–11–90; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed; San Diego Unified Port District/Pasha Properties Inc.; Puerto Rico Ports Authority/Sea-Land Service, Inc.

The Federal Maritime Commission hereby gives notice that the following agreement(s) have been filed with the Commission for approval pursuant to section 15 of the Shipping Act of 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 560.7 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200412

Title: San Diego Unified Port District/Pasha Properties, Inc. Terminal Operator Agreement.

Parties:

San Diego Unified Port District (Port)
Pasha Properties, Inc. (Pasha).

Filing Party: M. Christine Anderson, Director, Property Department, Port of San Diego, P.O. Box 488, San Diego, California 92112.

Synopsis: The Agreement provides for Pasha to have the exclusive right to operate a nonproprietary Motor Vehicle Terminal at the Port's National City Marine Terminal facilities and berths. The Port shall establish and publish Tariff charges to be applied in connection with the Motor Vehicle Terminal. The term of the Agreement is one year, ending July 15, 1991.

Agreement No.: 224–200410

Title: Puerto Rico Ports Authority/Sea-Land Service, Inc. Terminal Operator Agreement.

Parties:

Puerto Rico Ports Authority,
Sea-Land Service, Inc. (Sea-Land).

Filing Party: Ms. Mayra N. Cruz Alvarez, Contracts Supervisor, Puerto Rico Ports Authority, G.P.O. Box 2829 San Juan, PR 00936.

Synopsis: The Agreement provides for Sea-Land's 5-year lease of terminal facilities in Puerto Nuevo, San Juan, Puerto Rico for its maritime operations. The Agreement may be renewed for two additional 5-year terms.

Dated: September 6, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90–21354 Filed 9–11–90; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed; San Diego Unified Port District/Pasha Properties, Inc.

The Federal Maritime Commission hereby gives notice to the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200411

Title: San Diego Unified Port District/Pasha Properties, Inc. Terminal Agreement.

Parties:

San Diego Unified Port District (Port)
Pasha Properties, Inc. (Pasha)
San Diego Unified Port District.

Synopsis: The Agreement provides for Pasha's preferential non-exclusive use of approximately 1,611,196 square feet of tideland area located at the Port's National City Marine Terminal for handling, storing and delivery of motor vehicle cargoes. The term of the Agreement is for one year, ending on July 15, 1991.

Dated: September 6, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90–21355 Filed 9–11–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

[Docket No. C–3298]

Nippon Sheet Glass Co., Ltd., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the float glass manufacturers to repeal the

challenged portion of the Float Glass Capacity Agreement. In addition, the consent agreement prohibits respondents from entering into any agreement which has the purpose or effect of restraining competition by either limiting float glass manufacturing capacity in North America or restricting imports to North America.

DATES: Complaint and Order issued July 26, 1990.[1]

FOR FURTHER INFORMATION CONTACT: Robert Doyle, Jr., FTC/S–2308, Washington, DC 20580. (202) 326–2682.

SUPPLEMENTARY INFORMATION: On Tuesday, March 27, 1990, there was published in the **Federal Register**, 55 FR 11256, a proposed consent agreement with analysis In the Matter of Nippon Sheet Glass Company, Ltd., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 90–21377 Filed 9–11–90; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings in October

AGENCY: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agendas of the forthcoming meetings of the agency's advisory committees in the month of October 1990.

The Extramural Science Advisory Board, NIMH, meeting will be open and the agenda will include final decisions on the NIMH peer review process and information from NIMH staff concerning reorganization of the institute and major research initiatives. Attendance of the public will be limited to space available.

The initial review committees will be performing initial review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d).

Notice of these meetings is required under the Federal Advisory Committee Act, Publish Law 92–463.

Committee Name: Psychopathology Subcommittee of the Psychopathology and Clinical Biology Research Review Committee, NIMH.
Date and Time: October 3–5: a.m.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Status of Meeting: Open—October 3: 9–10 a.m. Closed—Otherwise.
Contact: Larnetta Gray, room 9C–08, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1340.
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the areas of clinical psychopathology and clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Cognition, Emotion, and Personality Research Review Committee, NIMH.
Date and Time: October 5–6: 9 a.m.
Place: The Hampshire Hotel, 1310 New Hampshire Avenue, NW., Washington, DC 20036.
Status of Meeting: Open—October 5: 10 a.m. Closed—Otherwise.
Contact: Barbara Campbell, room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3944.
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to the fields of personality, cognition, emotion, and higher mental processes with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA.
Date and Time: October 8–9: 9 a.m.
Place: Bethesda Hyatt Regency, One Bethesda Metro Center, Bethesda, MD 20814
Status of Meeting: Open—October 8: 9:30 a.m. Closed—Otherwise.
Contact: Ronald Suddendorf, room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106.
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support for research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Psychobiology and Behavior Research Review Committee, NIMH.
Date and Time: October 9–10: 9 a.m.
Place: The Canterbury Hotel, 1733 N Street NW., Washington, DC 20036.
Status of Meeting: Open—October 9: 9–10 a.m. Closed—Otherwise.
Contact: Debra Woods, room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3936.
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to experimental and physiological psychology and comparative behavior, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Epidemiology and Prevention Subcommittee of the Alcohol Psychosocial Research Review Committee, NIAAA.
Date and Time: October 10–12: 9 a.m.
Place: The Holiday Inn Capitol, 550 C Street SW., Washington, DC 20024.
Status of Meeting: Open—October 10: 9–10 a.m. Closed—Otherwise.
Contact: Lenore Sawyer Radloff, room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106.
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Aging Subcommittee of the Life Course and Prevention Research Review Committee, NIMH.
Date and Time: October 11–12: 9 a.m.
Place: The Hampshire Hotel, 1310 New Hampshire Avenue NW., Washington, DC 20036.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

Status of Meeting: Open—October 11: 9–10 a.m. Closed—Otherwise.
Contact: Phyllis Zusman, room 9C–18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3857.
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to mental health, in the fields of child, family, and aging, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Psychosocial and Biobehavioral Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH.
Date and Time: October 11–12: 9 a.m.
Place: The Carlyle Suites, 1731 New Hampshire Avenue NW., Washington, DC 20009.
Status of Meeting: Open—October 11: 9–10 a.m. Closed—Otherwise.
Contact: Frances Smith, room 9C–02, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4868.
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and/or research training activities in the area of treatment development and assessment and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Behavioral Neurobiology Subcommittee of the Neurosciences Research Review Committee, NIMH.
Date and time: October 11–13: 8:30 a.m.
Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852.
Status of Meeting: Open—October 11: 8:30–9:30 a.m. Closed—Otherwise.
Contact: Gerry Perlman, room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3936.
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to behavioral neurobiology, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Cellular Neurobiology and Psychopharmacology Subcommittee of the Neurosciences Research Review Committee, NIMH.
Date and time: October 11–13: 8:30 a.m
Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852.
Status of Meeting: Open—October 11: 8:30–9:30 a.m. Closed—Otherwise.
Contact: Barbara Campbell, room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3944.
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to cellular neurobiology, and psychopharmacology with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Epidemiology Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH.
Date and time: October 15–16: 9 a.m.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Status of Meeting: Open—October 15: 9–10 a.m. Closed—Otherwise.
Contact: Gloria Yockelson, room 9C–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0948.
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Psychopharmacological, Biological, and Physical Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH.
Date and time: October 15–16: 9 a.m.
Place: Washington Marriott, 1221 22nd Street, NW., Washington, DC.
Status of Meeting: Open—October 15: 9–10 a.m. Closed—Otherwise.
Contact: Helen Craig, room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367.
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and/or research training activities in the fields of treatment development and assessment and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Neuroscience and Behavior Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA.
Date and Time: October 15–17: 9 a.m.
Place: The Bethesda Ramada, 8400 Wisconsin Avenue, Bethesda, MD 20814.
Status of Meeting: Open—October 15: 9–10 a.m. Closed—Otherwise.
Contact: Antonio Noronha, room 16C–20, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4375.
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Clinical Program Projects and Clinical Research Centers Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH.
Date and Time: October 16–18: 7 p.m.
Place: Hyatt Rickeys, 4219 El Camino Real, Palo Alto, CA.
Status of Meeting: Open—October 16: 7–7:30 p.m. Closed—Otherwise.
Contact: Frances Smith, room 9C–02, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4868.
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of Mental Health Clinical Research Centers, clinical program projects, and other large-scale multi-disciplinary research projects, and makes recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Biochemistry Research Subcommittee of the Drug Abuse Biomedical Research Review Committee, NIDA.
Date and Time: October 16–19: 8:30 a.m.
Place: Crowne Plaza Holiday Inn, Twinbrook room, 1750 Rockville Pike, Rockville, MD 20852.
Status of Meeting: Open—October 16: 8:30 a.m. to 9 a.m. Closed—Otherwise.
Contact: Rita Liu, room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2620.
Purpose: The subcommittee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes

recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Drug Abuse Clinical and Behavioral Research Review Committee, NIDA.
Date and Time: October 16–19: 9 a.m.
Place: Crowne Plaza Holiday Inn, Woodmont room, 1750 Rockville Pike, Rockville, MD 20852.
Status of Meeting: Open—October 16: 9–9:30 a.m. Closed—Otherwise.
Contact: Daniel Mintz, room 10–22, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9042.
Purpose: The committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Drug Abuse Epidemiology and Prevention Research Review Committee, NIDA.
Date and Time: October 16–19: 8:30 a.m.
Place: Days Inn—Congressional Park, Montrose I and II Room, 1775 Rockville Pike, Rockville, MD 20852.
Status of Meeting: Open—October 16: 8:30–9 a.m. Closed—Otherwise.
Contact: Raquel Crider, room 10–22, Parklawn Building, 5600 Fishers Lane, Rockville, MD, 20857, (301) 443–9042.
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Pharmacology I Research Subcommittee of the Drug Abuse Biomedical Research Review Committee, NIDA.
Date and Time: October 16–19: 8:30 a.m.
Place: Crowne Plaza Holiday Inn, Montrose room, 1750 Rockville Pike, Rockville, MD 20852.
Status of Meeting: Open—October 16: 8:30–9 a.m. Closed—Otherwise.
Contact: Rita Liu, room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD, 20857, (301) 443–2620.
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Pharmacology II Research Subcommittee of the Drug Abuse Biomedical Research Review Committee, NIDA.
Date and Time: October 16–19: 8:30 a.m.
Place: Crowne Plaza Holiday Inn, Randolph room, 1750 Rockville Pike, Rockville, MD 20852.
Status of Meeting: Open—October 16: 8:30–9 a.m. Closed—Otherwise.
Contact: Gamil Debbas, room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, MD, 20857, (301) 443–2620.
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Clinical and Treatment Subcommittee of the Alcohol Psychosocial Research Review Committee, NIAAA.
Date and Time: October 17–19: 9: a.m.
Place: Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.
Status of Meeting: Open—October 17: 9–10 a.m. Closed—Otherwise.
Contact: Thomas D. Sevy, room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106.
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Committee Name: Clinical Biology Subcommittee of the Psychopathology and Clinical Biology Research Review Committee, NIMH.
Date and Time: October 17–19: a.m.
Place: The Hampshire Hotel, 1310 New Hampshire Avenue, NW., Washington, DC 20036.
Status of Meeting: Open—October 17: a.m. Closed—Otherwise.
Contact: Maureen Eister, room 9C–08, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1340
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of clinical psychopathology and clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Criminal and Violent Behavior Research Review Committee, NIMH.
Date and Time: October 17–19, 8:30 a.m.
Place: Quality Hotel Downtown, 1315 16th Street, NW., Washington, DC 20036
Status of Meeting: Open—October 17: 8:30 a.m. Closed—Otherwise.
Contact: Shirley Maltz, room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3944
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to the mental health aspects of antisocial, criminal, and individual violent behavior, including sexual asault and victimization, and law-mental health interactions related to these areas, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Services Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH.
Date and Time: October 17–19: a.m.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Status of Meeting: Open—October 17: a.m. Closed—Otherwise
Contact: Gloria Yockelson, room 9C–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0948
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Child and Family and Prevention Subcommittee of the Life Course and Prevention Research Review Committee, NIMH
Date and Time: October 18–20: a.m.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815
Status of Meeting: Open—October 18: a.m. Closed—Otherwise.
Contact: Christine Norton, room 9C–18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0948
Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants,

cooperative agreements, and research and development contracts, as they relate to mental health in the field of child, family and aging, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Research Scientist Development Review Committee, NIMH.
Date and Time: October 18–20: 9 a.m.
Place: Holiday Inn Chevy Chase, 5520, Wisconsin Avenue, Chevy Chase, MD 20815.
Status of Meeting: Open—October 18: 9–10 a.m. Closed—Otherwise.
Contact: Phyllis D. Artis, room 9C–15, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6470.
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities to develop and execute a program of Research Scientist and Research Scientist Development Awards to appropriate institutions for the support of individuals who are engaged full-time in research and related activities relevant to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Extramural Science Advisory Board, NIMH
Date and Time: October 22–23: 8:30 a.m.
Place: National Institutes of Health, Building 31, Conference room 6, 9000 Wisconsin Avenue, Bethesda, MD 20892.
Status of Meeting: Open—October 22–23: 8:30 a.m.–5 p.m.
Contact: Tony Pollitt, room 17C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3175
Purpose: The Committee advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, on the direction, scope, balance, and emphasis of the Institute's extramural science programs.

Committee Name: Small Business Research Review Committee, NIMH.
Date and Time: October 22–23: 9 a.m.
Place: Washington Marriott Hotel, 1221 22nd Street, NW., Washington, DC 20037.
Status of Meeting: Open—October 22: 9–10 a.m. Closed—Otherwise.
Contact: Gloria Levin, room 9C–14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367
Purpose: The Committee is charged with the initial review of applications requesting support from the National Institute of Mental Health for small businesses involved in mental health research. Final review and recommendations are made from the National Advisory Mental Health Council.

Committee Name: Mental Health Behavioral Sciences Research Review Committee, NIMH.
Date and Time: October 25–27: 8:30 a.m.
Place: Quality Hotel Downtown, 1315 16th Street, NW., Washington, DC 20036.
Status of Meeting: Open—October 25: 8:30–9:30 a.m. Closed—Otherwise.
Contract: Shirley Maltz, room 9C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3936.
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to behavioral sciences with recommendations to the National Advisory Mental Health Council for final review.

Substantive information, summaries of the meetings, and rosters of committee members may be obtained as follows: Ms. Diana Widner, NIAAA Committee Management Officer, room 16C–20, 443–4375; Ms. Camilla Holland, NIDA Committee Management Officer room 10–42, (301) 443–2755; Ms. Joanna Kieffer, NIMH Committee Management Officer, room 9–105, (301) 443–4333. The mailing address for the above parties is: Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20875.

Dated: September 6, 1990.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 90–21291 Filed 9–11–90; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Kansas City District Office, chaired by W. Michael Rogers, District Director. The topic to be discussed is proposed food labeling changes.

DATES: Thursday, September 27, 1990, 2 p.m. to 4:30 p.m.

ADDRESSES: Federal Office Building room 279, 210 Walnut St., Des Moines, IA 50309.

FOR FURTHER INFORMATION CONTACT: Mary-Margaret Richardson, Public Affairs Specialist, Food and Drug Administration, 808 North Collins Alley, St. Louis, MO 63102, 314–425–5021.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: September 5, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–21289 Filed 9–11–90; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 90N–0287]

FDA Approved Drug Products—the Future; Conference on the Orange Book and FDA Operations Related to the Drug Approval Process

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a conference entitled: "FDA Approved Drug Products—the Future." The conference will provide interested persons an opportunity to discuss ways for the agency to improve its publication entitled "Approved Drug Products with Therapeutic Equivalence Evaluations," also referred to as "the Orange Book". The conference will also give the agency an opportunity to discuss other operations, such as the new drug approval process.

DATES: The conference will be held on September 18, 1990, 1:30 p.m. to 5 p.m., question and answer period 4:15 p.m. to 5 p.m.; September 19, 1990, 8 a.m. to 2 p.m., open discussion and audience participation from 10:30 a.m. to 2 p.m. Registration begins half an hour before the start of each meeting. Written comments should be submitted by October 19, 1990.

ADDRESSES: On September 18, 1990, the conference will be held at the National Library of Medicine, Lister Hill National Center for Biomedical Communications, 8600 Rockville Pike, Bldg. 38A, Bethesda, MD; on September 19, 1990, the conference will be held at the Holiday Inn Crowne Plaza Hotel, 1750 Rockville Pike, Rockville, MD. Send written comments to the Dockets Management Branch (HFA–305), Food and Drug

Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Carmen R. Agoglia, Center for Drug Evaluation and Research (HFD–80), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0500.

SUPPLEMENTARY INFORMATION: "The Orange Book" contains a listing of approved drug products with therapeutic equivalence data, patent/exclusivity data, an over-the-counter (OTC) drug product list, and information about approved orphan drugs and abbreviated new drug application petitions.

FDA has scheduled a conference to provide a forum for interested persons to discuss with the agency their interests and concerns regarding the content and use of the Orange Book, to foster discussion about electronic transfer of Orange Book data, as well as to provide information about the drug approval process.

On Tuesday, September 18, 1990, the conference will be devoted to a general overview of the agency's operations (e.g., the drug approval process, adverse reaction reporting system) and the role of FDA's Center for Drug Evaluation and Research and Center for Biologics Evaluation and Research in these approval processes. Wednesday's conference will be devoted to issues relating to the Orange Book.

The agency encourages interested persons, especially those who cannot attend the conference, to submit written comments and recommendations to the Dockets Management Branch (address above). Comments should be submitted by October 19, 1990. Two copies of any comments are to be submitted, except that individuals may submit one copy Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday The agency will consider all comments it receives at the conference and comments submitted in response to this notice to determine how the Orange Book can be improved.

Dated: September 10, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–21615 Filed 9–10–90; 2:48 pm]

BILLING CODE 4160–01–M

Health Care Financing Administration

Privacy Act of 1974; Systems of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of proposed modification of existing systems of records.

SUMMARY: Title 18 of the Social Security Act at 42 U.S.C. 1395y(b) creates circumstances where the Medicare program does not have primary payment responsibility for the medical expenses a beneficiary incurs. To enable HCFA to enter into contracts with entities involved in the coordination of health insurance benefits and to help to assure effective coordination of Medicare payment with the private sector, we are proposing to modify the existing "routine uses" by adding additional items of information that HCFA may disclose. The systems of records involved are the "Carrier Medicare Claims Records" system, HHS/FCFA/BPO, the "Health Insurance Master Record" system, HHS/FCFA/BPO, and the "Intermediary Medicare Claims Records" system, HHS/FCFA/BPO.

Note: Notices pertaining to these systems were last published in the **Federal Register** September 11, 1990.

DATES EFFECTIVE: This proposed modified "routine use" will take effect without further notice October 12, 1990, unless comments received on or before that date warrant change.

ADDRESSES: Please address comments to: Richard A. DeMeo, HCFA Privacy Act Officer, Health Care Financing Administration, Room 108, Security Office Park, 7008 Security Boulevard, Baltimore, Maryland 21207 Telephone (301) 597–5242.

FOR FURTHER INFORMATION CONTACT: Herb Shankroff, Division of Operational Initiatives, 367 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207 Telephone (301) 966–7171.

SUPPLEMENTARY INFORMATION: One of the priorities of HHS is to encourage high quality and effective health care while pursuing strategies to contain or moderate health care costs and Medicare program expenditures. One aspect of the Medicare law that reduces Medicare expenditures is the Medicare Secondary Payer (MSP) program (42 U.S.C. 1395y(b)) which requires certain third party payers to pay primary benefits for individuals who are also entitled to Medicare. Under these provisions, Medicare is only secondarily responsible for payment for beneficiaries' health care costs.

MSP situations are generally identified by Medicare intermediaries when a bill for payment is presented on a beneficiary's behalf by participating providers of service. Often, however, because the beneficiary does not furnish the provider with complete information, or because the provider does not ask the beneficiary the right questions, Medicare pays primary benefits when the beneficiary has other coverage that under the law must pay primary to Medicare.

In order to coordinate benefits properly with third party payers, HCFA must be able to supply sufficient information to enable responsible third parties to determine their payment obligations for the health care costs of affected beneficiaries, and to make adjustments required by contract and law. We explained this in the October 10, 1989 **Federal Register** publication (54 FR 41505) in which we published "routine uses" to provide for effective coordination of benefits. These "routine uses": Number 24 of the "Carrier Medicare Claims Record" system; number 16 of the "Health Insurance Master Records" system; and number 22 of the "Intermediary Medicare Claims Records" system, permit HCFA to release certain information for coordination of benefits purposes.

However, experience has shown that the information described in the October 10, 1989 publication is too limited to be effective for MSP coordination of benefit purposes. In addition to the information described in that publication, it is necessary to identify the provider, physician, or supplier that supplied the service, the date and nature of the service provided and the diagnosis that created the need for the service This is because the mere fact and amount of Medicare payment, as currently authorized under the "routine users," is often an insufficient basis to enable a third party to make payment. Accordingly, HCFA must be able to provide this more specific claims information if it is to implement effectively Congress' intent that Medicare be secondary payer and, as necessary, recover mistaken primary payments.

In addition, one of HCFA's planned initiatives to help reduce the incidence of mistakenly paying first when another entity is primary payer is a competitively awarded contract to see if one or more organizations in the private sector, which are involved in the coordination of health insurance benefits business, can cost-effectively identify beneficiaries in a limited geographic area who have other

insurance primary to Medicare that went undetected by our intermediaries. These organizations, however, would not be able to operate efficiently unless HCFA is able to supply the additional pieces of information, described above, that are not presently included in the existing records that have been approved for "routine use".

The Privacy Act allows HCFA to disclose information without a beneficiary's consent if the information is to be used for a purpose which is compatible with the reasons for collecting the information. HCFA discloses information for "routine uses" when it is necessary to carry out our programs. We may disclose information to Federal, State, local governments, or private agencies or individuals for purposes that are compatible with the reasons for collecting the information, when the benefit of that use outweighs the effect, or risk of an effect, on the privacy of individuals.

To comply with the requirements of the Privacy Act, HCFA is proposing to modify these systems of records by adding the following additional data elements for the "routine uses" published on October 10, 1989: Provider, physician, or supplier name and number, dates and nature of service, and diagnosis.

The disclosure of this additional information can be accomplished with no reduction in a beneficiary's, spouse's, or family member's privacy. Release of this information is already a general condition of payment by the insurance industry to which individual insureds are subject. This is also so in the case of requests for Medicare payment. Moreover, the other entities with whom the data will be shared must agree to very strict provisions concerning the protection of the data and the prevention of any unauthorized use.

In order to receive this information the entity and any third party payer receiving the information from the entity for coordination of benefit purposes must agree to the following conditions:

a. To utilize the information solely for the purpose of coordination of benefits with the Medicare program and other third party payers in accordance with 42 U.S.C. 1395y(b);

b. To safeguard the confidentiality of the data and to prevent unauthorized access to it;

c. To prohibit the use of beneficiary-specific data for purposes other than for the coordination of benefits among third party payers and the Medicare program. This agreement would allow the entities to use the information to determine cases where they or other third party payers have primary responsibility for payment or cases where Medicare has primary responsibility for payment. Examples of prohibited uses would include but are not limited to: Creation of a mailing list, sale or transfer of data.

Note: These conditions have been modified to clarify that the recipient of this information may share it with another entity for coordination of benefit purposes subject to the same restrictions.

Because the addition to existing "routine uses" of new items of information that HCFA may disclose will not change the purpose for which the information is to be used or otherwise significantly alter the systems, this action does not require a report of altered system under 5 U.S.C. 552a(o).

The entire systems are being reprinted below for the convenience of the reader.

Dated: August 29, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

09-70-0501

SYSTEM NAMES

Carrier Medicare Claims Records. HHS, HCFA, BPO

SECURITY CLASSIFICATIONS:

None.

SYSTEM LOCATION:

Carriers under contract to the Health Care Financing Administration and the Social Security Administration (see Appendix A, Section 4)

Federal Records Centers.

Bureau of Quality Control, HCFA Office of Systems Analysis, 6325 Security Boulevard, Baltimore, Maryland 21207.

HHS Parklawn Computer Center, 5600 Fishers Lane, Rockville, Maryland 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Beneficiaries who have submitted claims for Supplementary Medical Insurance (Medicare Part B), or are eligible, or individuals whose enrollment in an employer group health benefits plan covers the beneficiary.

CATEGORIES OF RECORDS IN THE SYSTEM:

Request for Payment: Provider Billing for Patient services by Physician; Prepayment Plan for Group Medicare Practice dealing through a Carrier, Health Insurance Claim Form, Request for Medical Payment, Patient's Request for Medicare Payment, Request for Medicare Payment—Ambulance, Explanation of Benefits, Summary Payment Voucher, Request for Claim Number Verification; Payment Record Transmittal; Statement of Person Regarding Medicare Payment for Medical Services Furnished Deceased Patient; Report of Prior Period of Entitlement; itemized bills and other similar documents from beneficiaries required to support payments to beneficiaries and to physicians and other suppliers of part B Medicare services; medicare secondary payer records containing other party liability insurance information necessary for appropriate Medicare claim payment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1842, 1862(b) and 1874 of title XVIII of the Social Security Act (42 U.S.C. 1395u, 1395y(b) and 1395kk).

PURPOSE:

To properly pay medical insurance benefits to or on behalf of entitled beneficiaries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to: (1) Claimants, their authorized representative or representatives payees to the extent necessary to pursue claims made under Title XVIII of the Social Security Act (Medicare)

(2) Third-party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capability to manage his or her affairs or to his or her eligibility for or entitlement to benefits under the Medicare program when:

(a) The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exist: individual is incapable or of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's eligibility to benefits under the medicare program: The amount of reimbursement: any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement of system activities.

(3) Third-party contacts where necessary to establish or verify

information provided by representative payees or payee applicants.

(4) The Treasury Department for investigating alleged theft, forgery, or unlawful negotiation of Medicare reimbursement checks.

(5) The U.S. Postal Service for investigating alleged forgery or theft of Medicare checks.

(6) The Department of Justice for investigating and prosecuting violations of the Social Security Act to which criminal penalties attach, or other criminal statutes as they pertain to the Social Security Act programs, for representing the Secretary, and for investigating issues of fraud by agency officers or employees, or violation of civil rights.

(7) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment.

(8) Professional Review Organizations in connection with their review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Social Security Act.

(9) State Licensing Boards for review of unethical practices of nonprofessional conduct.

(10) Providers and suppliers of services (and their authorized billing agents) directly or dealing through fiscal intermediaries or carriers, for administration of provisions of title XVIII.

(11) An individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determines that the use of disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose for which this disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished:

(c) Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety or any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a properly identified person for the purpose of audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law;

d. Secures a written statement attesting to the information recipient's understanding of and willingness to abide by these provisions.

(12) State welfare departments pursuant to agreements with the Department of Health and Human Services for administration of State supplementation payments for determinations of eligibility for Medicaid, for enrollment of welfare recipients for medical insurance under section 1843 of the Social Security Act, for quality control studies, for determining eligibility of recipients of assistance under titles IV and XIX of the Social Security Act, and for the complete administration of the Medicaid program.

(13) A congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

(14) State audit agencies in connection with the audit of Medicare eligiblity considerations. Disclosures of physicians' customary charge data are made to State audit agencies in order to ascertain the correctness of Title XIX charges and payments.

(15) The Department of Justice to a court or other tribunal, or to another party before such tribunal, when

(a) HHS, or any component thereon; or

(b) Any HHS employee in his or her offical capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice for HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(16) Peer review groups, consisting of members of State, County, or local medical societies or medical care foundations (physicians), appointed by the medical society or foundation at the request of the carrier to assist in the resolution of questions of medical necessity, utilization of particular procedures or practices, or overutilization of services with respect to Medicare claims submitted to the carrier.

(17) Physicians and other supplies of services who are attempting to validate individual items on which the amounts include in the annual Physician-Supplier Payment List or similar publications are based.

(18) Senior citizen volunteers working in intermediaries' and carriers' offices to assist Medicare beneficiaries in response to beneficiaries' requests for assistance.

(19) A contractor working with Medicare carriers/intermediaries to identify and recover erroneous Medicare payments for which workers' compensation programs are liable.

(20) State and other governmental Workers' Compensation Agencies working with the Health Care Financing Administration to assure that workers' compensation payments are made where Medicare has erroneously paid and workers' compensation programs are liable.

(21) Release information, without the beneficiary's authorization, to insurance companies, self-insurers, Health Maintenance Organizations, multiple employer trusts and other groups providing protection against medical expenses of their enrollees. Information to be disclosed shall be limited to Medicare entitlements data. In order to receive the information the entity must agree to the following conditions:

a. To certify that the individual on whom the information is being provided is one of its insureds;

b. To utilze the information solely for the purpose of processing the identified individual's insurance claims; and

c. To safeguard the confidentiality of the data and to prevent unauthorized access to it.

(22) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

(23) To an agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the State, if HCFA:

a. Determines that the use of disclosure does not violate legal limitations under which the data were provided, collected, or obtained;

b. Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;

c. Determines that the purpose for which the disclosure is to be made;

(1) Cannot reasonably be accomplished unless the data are provided in individually identifiable form;

(2) is of sufficient importance to warrant the effect and/or risk on the privacy of the individuals that additional exposure of the record might bring, and;

(3) There is reasonable probability that the objectives for the use would be accomplished; and

d. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another project under the same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law; and

(4) Secure a written statement attesting to the recipient's understanding of and willingness to abide by these provisions. The recipient must agree to the following:

(1) Not to use the data for purpose that are not related to the evaluation of cost, quality and effectiveness of care;

(2) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level when no data cells have ten or fewer beneficiaries); and

(3) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

(24) To insurers, underwriters, third party administrators, self-insurers, groups health plans, employers, health maintenance organizations, health and welfare benefit funds, Federal agencies, a State or local government or political subdivision of either (when the organization has assumed the role of an insurer, underwriter, or third party administrator, or in the case of a State that assumes the liabilities of an insolvent insurer, through a State created insolvent insurer pool or fund), multiple-employer trusts, no-fault, medical, automobile insurers, workers' compensation carriers or plans, liability insurers, and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 U.S.C. 1395y(b), or any entity having knowledge of the occurrence of any event affecting (A) an individual's right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment (for example, a State Medicaid Agency, State Workers' Compensation Board, or the Department of Motor Vehicles) for the purpose of coordination of benefits with the Medicare program and implementation of the Medicare Secondary Payer provisions at 42 U.S.C. 1395y(b). The information HCFA may disclose will be:

- Beneficiary Name
- Beneficiary Address
- Beneficiary Health Insurance Claim Number
- Beneficiary Social Security Number
- Beneficiary Sex
- Beneficiary Date of Birth
- Amount of Medicare Conditional Payment
- Provider name and number
- Physician name and number
- Supplier name and number
- Dates of service
- Nature of Service
- Diagnosis

To administer the Medicare Secondary payer provisions at 42 U.S.C. 1395y(b)(2), (3), (4) more effectively. HCFA would receive (to the extent that it is available) and may disclose the following types of information from insurers, underwriters, third party administrators, self-insured, etc.:

- Subscriber Name and Address
- Subscriber Date of Birth
- Subscriber Social Security Number
- Dependent Name
- Dependent Date of Birth
- Dependent Social Security Number
- Dependent Relationship to Subscriber
- Insurer/Underwriter/TPA Name and Address
- Insurer/Underwriter/TPA Group Number
- Insurer/Underwriter/TPA Group Name
- Prescription Drug Coverage
- Policy Number
- Effective Date of Coverage
- Employer Name, Employer Identification Number (EIN) and Address
- Employment Status
- Amounts of Payment

To Administer the Medicare Secondary payer provision at 42 U.S.C. 1395y(b)(1) more effectively for entities such as Workers Compensation carriers or boards, liability insurers, no-fault and automobile medical policies or plans, HCFA would recieve (to the extend that it is available) and may disclose the following information:

- Beneficiary's Name and Address
- Beneficiary's Date of Birth
- Beneficiary's Social Security Number*
- Name of Insured*
- Insurer Name and Address
- Type of coverage; automobile medical, no-fault, liability payment, or workers' compensation settlement.
- Insured's Policy Number
- Effective Date of Coverage
- Date of accident, injury or illness
- Amount of payment under liability, no-fault, or automobile medical policies, plans, and workers' compensation settlement.
- Employer Name and Address (Workers' Compensation only)
- Name of insured could be the driver of the car, a business, the beneficiary (i.e., the name of the individual or entity which carries the insurance policy or plan.)

In order to receive this information the entity must agree to the following conditions:

a. To utilize the information solely for the purpose of coordination of benefits with the Medicare program and other third party payers in accordance with 42 U.S.C. 1395y(b);

b. To safeguard the confidentiality of the data and to prevent unauthorized access to it;

c. To prohibit the use of beneficiary-specific data for purposes other than for the coordination of benefits among third party payers and the Medicare program. This agreement would allow the entities to use the information to determine cases where they or other third party payers have primary responsibility for payment or cases where Medicare has primary responsibility for payment. Examples of prohibited uses would include but are not limited to: Creation of a mailing list, sale or transfer of data.

—To administer the MSP provisions more effectively, HCFA may receive or disclose the following types of information from or to entities including insurers, underwriters, third party administrators (TPAs), and self-insured plans, concerning potentially affected individuals:

- Subscriber Health Insurance Claim Number
- Dependent Name
- Funding arrangements of employer group health plans, for example, contributory or non-contributory plan, self-insured, re-insured, HMO, TPA insurance
- Claims payment information, for example, the amount paid, the date of payment, the name of the insurer or payer
- Dates of employment including termination date, if appropriate
- Number of full and/or part-time employees in the current and preceding calendar years
- Employment status of subscriber, for example full or part time, self employed

(25) To the Internal Revenue Service for the application of tax penalties against employers and employee organizations that contribute to Employer Group Health Plans or Large Group Health Plans that are not in compliance with 42 U.S.C 1395y(b).

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained on paper, tape, disc, and punchcards.

RETRIEVABILITY:

System is indexed by health insurance claim number. The record is prepared by the beneficiary and is used by carriers to determine amount of Part B benefits. The bills are retained by the carriers.

SAFEGUARDS:

Unauthorized personnel are denied access to the records area. Disclosure is limited. Physical safeguards related to the transmission and reception of data between Rockville and Baltimore are those requirements established by the DHHS ADP Systems Manual, Part 6.

RENTION AND DISPOSAL:

Records are closed at the end of the calender year in which paid, held two additional years, transferred to Federal Records Center and destroyed after another 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Health Care Financing Administration. Bureau of Program Operations, Director, Division of Carrier Procedures, 6325 Security Boulevard, Baltimore, Md 21207.

NOTIFICATION PROCEDURE:

Inquiries and requests for system records should be addressed to the most convenient social security office, the appropriate carrier, the HCFA Regional Office, or to the system manager named above. The individual should furnish his or her health insurance claim number and the name as shown on social security records. An individual who requests notification of or access to a medical record shall at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the records contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably indentify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification.

RECORD SOURCE CATEGORIES:

The data contained in these records is either furnished by the individual or, in the case of some Medicare secondary payer situations, through third party contacts. In most cases, the identifying information is provided to the physician by the individual. The physician then adds the medical information and submits the bill to the carrier for payment.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A—Medicare Carriers

Medicare Coordinator, Blue Cross and Blue Shield of Alabama, 450 Riverchase Parkway East, Birmingham, Alabama 35298

Vice President for Medicare and Medical Services, Arkansas Blue Cross and Blue Shield, Inc., 601 Gaines Street, Little Rock, Arkansas 72203

Medicare Coordinator, California Physicians Service, (d/b/a Blue Shield of California), P.O. Box 7013, No. 2 Northpoint, San Francisco, California 94120

Medicare Coordinator, Transamerica Occidential Life Insurance Company, P.O. Box 54905 Terminal Annex, Los Angeles, California 90054

Assistant Vice President, Rocky Mountain Hospital and Medical Service, (d/b/a Blue Cross and Blue Shield of Colorado), 700 Broadway, Denver, Colorado 80273

Medicare Administrator, Travelers Ins. Co., One Tower Square, Hartford, Connecticut 06183

Medicare Administrator, Aetna Life & Casualty, 151 Farmington Avenue, Hartford, Connecticut 06156

Medicare Coordinator, Blue Cross and Blue Shield of Florida, Inc., P.O. Box 1798, Jacksonville, Florida 32231

Health Care Service Corporation, 233 North Michigan Avenue, Chicago, Illinois 60601

Associated Insurance Companies, Inc., (d/b/a Blue Cross and Blue Shield of Indiana), 8320 Craig Street, Suite 10, Indianapolis, Indiana 46250-0453

Assistant Executive Director, Blue Shield of Iowa, Ruan Building, 636 Grand Avenue Station 28, Des Moines, Iowa 50309

Medicare Assistant, Blue Cross and Blue Shield of Kansas, Inc., P.O. Box 239, Topeka, Kansas 66601

Blue Cross and Blue Shield of Kentucky, Inc., 100 East Vine Street, 6th Floor, Lexington, Kentucky 40517

Medicare Coordinator, Blue Cross and Blue Shield of Maryland, Inc, 700 E. Joppa Road, Baltimore, Maryland 21204

Medicare Coordinator Part B, Blue Shield of Massachusetts, Inc., 100 Summer Street, Boston, Massachusetts 02110

Assistant Vice President Government, Affairs Department, Blue Cross and Blue Shield of Michigan, 600 Lafayette East, Detroit, Michigan 48226

Blue Cross and Blue Shield of Minnesota, P.O. Box 64357, 3535 Blue Cross Road, St Paul, Minnesota 55164

Vice President Government Programs, Blue Cross and Blue Shield of Kansas City, P.O. Box 169, Kansas City, Missouri 64141

Director, Medicare Administration, General American Life Insurance Co., P.O. Box 505, St. Louis, Missouri 63166

Blue Cross and Blue Shield of Montana, Inc., P.O. Box 4309, 404 Fuller Avenue, Helena, Montana 59601

Medicare Coordinator, Prudential Insurance Co. of America, Tri-City Office Drawer 471, Millville, New Jersey 08332
Directors of Medicare Part B, Blue Shield of Western New York, Inc., 298 Main Street, Buffalo, New York 14202
Medicare Coordinator, Group Health Insurance, Inc., 330 West 42nd Street, New York, New York 10036
Medicare Coordinator, Empire Blue Cross and Blue Shield, 622 Third Avenue, New York, New York 10017
Medicare Coordinator, EQUICOR, Inc., 1285 Avenue of the Americas, New York, New York 10019
Medicare Coordinator, Blue Cross and Blue Shield of North Dakota, 4510 13th Avenue, S.W., Fargo, North Dakota, 58121
Medicare System and Processing Division, Nationwide Mutual Insurance Company, P.O. Box 16788, Columbus, Ohio 43216
Medicare Coordinator, Pennsylvania Blue Shield, P.O. Box 65, Camp Hill, Pennsylvania 17011
Chief, Internal Operations, Sequros de Servicio de Salud de Puerto Rico, Inc., G.P.O. Box 3628, San Juan, Puerto Rico, 00936-3628
Medicare Coordinator, Blue Cross and Blue Shield of Rhode Island, 444 Westminster Mall, Providence, Rhode Island 02901
Medicare Coordinator, Blue Cross and Blue Shield of South Carolina, Fontaine Business Center, 300 Arbor Lake Drive, Suite 1300, Columbia, South Carolina 29223
Blue Cross and Blue Shield of Texas, Inc., 901 South Central Expressway, P.O. Box 833815, Richardson, Texas 75083-3815
Manager, Part B, Blue Cross and Blue Shield of Utah, P.O. Box 30270, 2455 Parley's Way, Salt Lake City, Utah 84130
Assistant Administrator, Washington Physicians Service, 4th and Battery Building, 2401 4th Avenue, 6th Floor, Seattle, Washington 98121
Director, Medicare Claims Department, Wisconsin Physicians' Service Insurance, Corp., 1717 West Broadway, Monona, Wisconsin 54713

09-70-0502

SYSTEM NAME:

Health Insurance Master Record. HHS/HCFA/BPO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration Bureau of Data Management and Strategy, 6325 Security Blvd., Baltimore, Md. 21207. Federal Records Centers

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals age 65 or over who have been, or currently are, entitled to health insurance (Medicare) benefits under title XVIII of the Social Security Act; individuals under age 65 who have been, or currently are, entitled to such benefits on the basis of having been entitled for not less than 24 months to disability benefits under title II of the Act or under the Railroad Retirement Act and individuals who have been, or currently are, entitled to such benefits because they have end-stage renal disease; or individuals whose enrollment in an employer group health benefits plan covers the beneficiary.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information on enrollment, entitlement, utilization, query and reply activity, health insurance bill and payment record processing workers' compensation entitlement information, and entitlement information from the Veterans' Administration (VA), Health Insurance Master Record maintenance, and Medicare secondary payer records containing other party liability insurance information necessary for appropriate Medicare claim payment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1814, 1833 and 1862(b) of title XVIII of the Social Security Act (42 U.S.C. 1396f, 1395l and 1395y(b)).

PURPOSE(S):

To maintain information on Medicare beneficiary eligibility and costs in order to reply to inquires from contractors and intermediaries and to maintain utilization data for health insurance bill and payment record processing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDNG CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Disclosure may be made to: (1) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Act relating to railroad employment.

(2) State Welfare Department pursuant to agreements with the Department of Health and Human Services for determining Medicaid and Medicare eligibility for quality control studies, for determining eligibility of recipients of assistance under title IV, XVIII, and XIX of the Social Security Act, and for the complete administration of the Medicaid program.

(3) State audit agencies for auditing State Medicaid eligibility considerations.

(4) Providers and suppliers of services directly or dealing through fiscal intermediaries or carriers for administration of title XVIII.

(5) A congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(6) An individual or organization for a research, evaluation or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determine that the use of disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose of which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished:

c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate jsutification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a property identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law:

d. Secures a written statement attesting to the information recipient(s) understanding of and willingness to abide by these provisions.

(7) The Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(8) To a contractor when the Department contracts with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system. Relevant records will be disclosured to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

(9) State welfare agencies that require access to the two files which are extracted from the Health Insurance Master Record. These files are the Carrier Alphabetical State File (CASF) and Beneficiary State File (BEST). Most State agencies require access to the CASF and BEST files for improved administration of the Medicaid program. Routine uses of the CASF and BEST files for State agencies are: (a) Obtaining a beneficiary's correct health insurance claim number and (b) screening of prepayment and post-payment Medicaid claims.

(10) Third-party contacts (without the consent of the individual to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capability or manage his or her affairs or to his or her eligibility for an entitlement to benefits under the Medicare program when:

(a) The individual is unable to provide the information being sought (an individual is considered to be unable to provide ceratain types of information when any of the following conditions exist: Individuals is incapable or of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual): or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's eligibility to benefits under the Medicare program; the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement of system activities.

(11) Release information, without the beneficiary's authorization, to insurance companies, self-insurers, Health Maintenance Organizations, multiple employer trusts and other groups providing protection against medical expenses of their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive this information the entity must agree to the following conditions:

a. To certify that the individual about whom the information is being provided is one of its insureds;

b. To utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. To safeguard the confidentiality of the data and to prevent unauthorized access to it.

(12) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors, incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

(13) To an agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the State, if HCFA:

a. Determine that the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained;

b. Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;

c. Determines that the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individuals that additional exposure of the record might bring, and;

(3) There is reasonable probability that the objective for the use would be accomplished; and

d. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use or disclosure of the record except;

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another project under the same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subject to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law; and

(4) Secure a written statement attesting to the recipient's understanding of an willingness to abide by these provisions. The recipient must agree to the following:

(1) Not to use the data for purposes that are not related to the evaluation of cost, quality, and effectiveness of care;

(2) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level when no data cells have ten or fewer beneficiaries); and

(3) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

(14) To a group health plan (i.e., health maintenance organization (HMO), or a competitive medical plans (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP), directly or through a contractor on a case-by-case basis for the purpose of determining the eligibility of a Medicare beneficiary to enroll in the group health plan. Group health plans will have access only to one record at a time and only through a CRT terminal. A password must be enterd to gain access to the file. Both the beneficiary name and the Health Insurance Claim number must be entered to access individual records within the file. The information disclosed will be the minimum necessary to determine eligibility for enrollment.

(15) To a contractor when HCFA contracts with a private firm for the purpose of refining or otherwise processing data and disclosing such data to group health plans consistent with routine use No. 14. The contractor will be required to safeguard the confidentiality of the data and prevent unauthorized use or disclosure.

(16) To insurers, underwriters, third party administrators, self-insurers, group health plans, employers, health maintenance organizations, health and welfare benefit funds, Federal agencies, a State or local government or political subdivision of either (when the organization has assumed the role of an insurer, underwriter, or third party administrator, or in the case of a State that assumes the liabilities of an insolvent insurer, through a State created insolvent insurer pool or fund), multiple-employer trusts, no-fault, medical, automobile insurers, workers' compensation carriers or plans, liability insurers, and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 USC 1395y(b), or any entity having knowledge of the occurrence of any event affecting (A) an individual's right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment (for example, a State Medicaid Agency, State Workers' Compensation Board, or Department of Motor Vehicles) for the purpose of coordination of benefits with the Medicare program and implementation of the Medicare Secondary Payer provisions at 42 USC 1395y(b). The information HCFA may disclose will be:

- Beneficiary Name
- Beneficiary Address
- Beneficiary Health Insurance Claim Number
- Beneficiary Social Security Number
- Beneficiary Sex
- Beneficiary Date of Birth
- Amount of Medicare Conditional Payment
- Provider name and number
- Physician name and number
- Supplier name and number
- Dates of service
- Nature of service
- Diagnosis

To adminster the Medicare Secondary payer provisions at 42 U.S.C. 1395y(b)(2), (3), (4) more effectively, HCFA would receive (to the extent that it is available) and may disclose the following types of information from insurers, underwriters, third party administrators, self-insureds, etc.:

- Subscriber Name and Address
- Subscriber Date of Birth
- Subscriber Social Security Number
- Dependent Name
- Dependent Date of Birth
- Dependent Social Security Number
- Dependent Relationship to Subscriber
- Insurer/Underwriter/TPA Name and Address
- Insurer/Underwriter/TPA Group Number
- Insurer/Underwriter/TPA Group Name
- Prescription Drug Coverage
- Policy Number
- Effective Date of Coverage
- Employer Name, Employer Identification Number (EIN) and Address
- Employment Status
- Amounts of Payment

To administer the Medicare Secondary payer provision at 42 U.S.C. 1395y(b)(1) more effectively for entities such as Workers Compensation carriers or boards, liability insureres, no-fault and automobile medical policies or plans, HCFA would receive (to the extent that it is available) and may disclose the following information:

- Beneficiary's Name and Address
- Beneficiary's Date of Birth
- Beneficiary's Social Security Number*
- Name of Insured*
- Insurer Name and Address
- Type of coverage; automobile medical, no-fault, liability payment, or workers' compensation settlement
- Insured's Policy Number
- Effective Date of Coverage
- Date of accident, injury or illness
- Amount of payment under liability, nofault, or automobile medical policies, plans, and workers' compensation settlements
- Employer Name and Address (Workers' Compensation only)
- Name of insured could be the driver of the car, a business, the beneficiary (i.e., the name of the individual or entity which carries the insurance policy or plan).

In order to receive this information the entity must agree to the following conditions:

a. To utilize the information solely for the purpose of coordination of benefits with the Medicare program and other third party payers in accordance with 42 U.S.C. 1395y(b);

b. To safeguard the confidentiality of the data and to prevent unauthorized access to it;

c. To prohibit the use of beneficiary-specific data for purposes other than for the coordination of benefits among third party payers and the Medicare program. This agreement would allow the entities to use the information to determine cases where they or other third party payers have primary responsibility for payment or cases where Medicare has primary responsibility for payment. Examples of prohibited uses would include but are not limited to: Creation of a mailing list, sale or transfer of data.

—To administer the MSP provisions more effectively, HCFA may receive or disclose the following types of information from or to entities including insurers, underwriters, third party administrators (TPAs), and self-insured plans, concerning potentially affected individuals:

- Subscriber Health Insurance Claim Number
- Dependent Name
- Funding arrangements of employer group health plans, for example, contributory or non-contributory plan, self-insured, re-insured, HMO, TPA insurance
- Claims payment information, for example, the amount paid, the date of payment, the name of the insurer or payer
- Dates of employment including termination date, if appropriate
- Number of full and/or part-time employees in the current and preceding calendar years
- Employment status of subscriber, for example full or part time, self employed

(17) To the Internal Revenue Service for the application of tax penalties against employers and employee organizations that contribute to Employer Group Health Plans or Large Group Health Plans that are not in compliance with 42 U.S.C. 1395y(b).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained on paper, listings, microfilm, magnetic tape disc and punchcards.

RETRIEVABILITY:

System is sequence by health insurance claim number, and is used to carry our the tasks of enrollment query/reply activity, and health insurance bill and payment record processings. Copies of selected parts of the records will be used by the Office of Statistics and Data Management.

SAFEGUARDS:

Unauthorized personnel are denied access to the records areas. Disclosure is limited to routine use. For computerized records electronically transmitted between Central Office and field office locations (including Medicare contractors) systems

securities are established in accordance with DHHS ADP Systems Manual. Part 6, "ADP Systems Security." Safeguards include a lock/unlock passwords system, exclusive use of leased telephone lines, a terminal oriented transaction matrix, and audit trail.

RETENTION AND DISPOSAL:

Records are generally added to the file several months prior to entitlement. After the death of a beneficiary, his or her records may be placed in an inactive file following a period of no billing or query activity. The current 5 years of Part B and current 5 spells of Part A utilization data are maintained. All noncurrent data is microfilmed prior to elimination from the system.

SYSTEM MANAGER(S) AND ADDRESS:

Health Care Financing Administration, Bureau of Program Operations, Director, Division of Entitlement Requirements 6325 Security Boulevard, Baltimore, MD 21207.

NOTIFICATION PROCEDURE:

Inquiries and requests for system records should be addressed to the most conventional social security office, the appropriate carrier or intermediary, the HCFA Regional Office, or the system manager named above. The individual should furnish his or her health insurance claim number and name as shown on Medicare records.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. (These access procedures are in accordance with Department Regulations (45 CFR 5b.5(a)(2).))

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

The data contained in these records are furnished by the individual, or in the case of some Medicare secondary payer situations, through third party contacts. There are cases, however, in which the identifying information is provided to the physician by the individual; the physician then adds the medical information and submits the bill to the carrier for payment. Updating information is also obtained from the Master Beneficiary Record.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

90-70-0503

SYSTEM NAME:

Intermediary Medicare Claims Records, HHS, HCFA, BPO.

SECURITY CLASSIFICATIONS:

None

SYSTEM LOCATIONS:

Intermediaries under contract to the Health Care Financing Administration and the Social Security Administration (See Appendix A, Section 3.)

Federal Records Centers

Bureau of Quality Control, HCFA, Office of Systems Analysis, 6325 Security Boulevard, Baltimore, Maryland, HHS Parklawn Computer Center, 5600 Fishers Lane, Rockville, Maryland 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Beneficiaries on whose behalf providers have submitted claims for reimbursement on a reasonable cost basis under Medicare parts A and B, or are eligible, or individuals whose enrollment in an employer group health benefits plan covers the beneficiary.

CATEGORIES OF RECORDS IN THE SYSTEM:

Billing for Medical and Other Health Services: Uniform bill for provider services or equivalent data in electronic format, and Medicare secondary payer records containing other party liability insurance information necessary for appropriate Medicare claims payment and other documents used to support payments to beneficiaries and providers of services. These forms contain the beneficiary's name, sex, health insurance claim number, address, data of birth, medical record number, prior stay information, provider name and address, physician's name, and/or identification number, warranty information when pacemakers are implanted or explanted, date of admission and discharge, other health insurance, diagnoses, surgical procedures, and a statement of services rendered for related charges and other data needed to substantiate claims.

The following elements are outpatient data provided to Medicare intermediaries by rehabilitation agencies, skilled nursing facilites, hospital outpatient departments, and home intravenous drug providers and home health agencies that provide physical therapy in addition to home health services:

- Outpatient's name
- HI number
- Admission data to provider
- Place treatment rendered
- Number of visits since start of care
- Diagnosis
- Diagnosis requiring treatment
- Onset of condition for which treatment is being sought
- Dates of previous therapy for same diagnosis
- Other therapy outpatient is currently receiving
- Observations
- Precautions and medical equipment
- Functional status immediately prior to this therapy
- Types of treatment—modalities
- Frequency of treatment
- Expected duration of treatment
- Rehabilitation potential
- Level of communication potential
- Average time per visits
- Goals
- Statement of problem at beginning of billing period
- Changes in problem at end of billing period
- Signature of therapist
- Certification and recertification by physician that services are to be provided from an established plan of care
- Tests results
- Biopsy reports
- Methods of administration, e.g., pill vs. injection
- Physician's orders
- Procedure codes
- Changes
- Weekly progress notes
- National Drug Code (NDC)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1816, 1862(b) and 1874 of Title XVIII of the Social Security Act (42 U.S.C. 1395th, 1395y(b) and 1395kk).

PURPOSE(S)

To process and pay Medicare benefits to or on behalf of eligible individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to:

(1) Claimants, their authorized representatives or representative payees to the extent necessary to pursue claims made under title XVIII of the Social Security Act (Medicare).

(2) Third-party contacts without the consent of the individual to whom the information pertains in situations where the party to be contacted has, or is expected to have information relating to the individual's capability to manage his or her affairs or to his or her eligibility for or entitlement to benefits under the Medicare program when:

(a) The individual is unable to provide the information being sought [an individual is considered to be unable to provide certain types of information when any of the following conditions exist: Individual is incapable or of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy provide to the individual), or

(b) The data are needed to establish the vadility of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's eligibility to benefits under the Medicare program; the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement of systems activities.

(3) Third-party contacts where necessary to establish or verify information provided by representative payees or payee applicants.

(4) The Treasury Department for investigating alleged theft, forgery, or unlawful negotiations of Medicare reimbursement checks.

(5) The U.S Postal Service for investigating alleged forgery or theft of Medicare checks.

(6) The Department of Justice for investigating and prosecuting violations of the Social Security Act to which criminal penalties attach, or other criminal statues as they pertain to Social Security Act programs, for representing the Secretary, and for investigating issues of fraud by agency officers or employees, or violation of civil rights.

(7) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment.

(8) Professional Review Organizations in connection with their review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Social Security Act.

(9) State Licensing Boards for review of unethical practices or nonprofessional conduct.

(10) Providers and suppliers of services (and their authorized billing agents) directly or dealing through fiscal intermediaries or carriers, for administration of provisions of title XVIII.

[11) An individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained:

b. Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished:

c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retainig such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit.

(d) When required by law:

d. Secures a written statement attesting to the information recipient's understanding of and willingness to abide by the provisions.

(12) State welfare departments pursuant to agreements with the Department of Health and Human Services for administration of State supplementation payments for determination of eligibility for Medicaid, for enrollment of welfare recipients for medical insurance under Section 1843 of the Social Security Act, for quality control studies, for determining eligibility of recipients of assistance under titles IV and XIX of the Social Security Act, and for the complete administration of the Medicaid program.

(13) A congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

(14) State audit agencies in connection with the audit of Medicaid eligibility considerations.

(15) The Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHE employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee, or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the government party, provided, however, that in such case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(16) Senior citizen volunteers working in the intermediaries' and carriers' offices to assist Medicare beneficiaries' in reponse to beneficiaries requests for assistance.

(17) A contractor working with Medicare carriers/ intermediaries to identify and recover erroneous Medicare payments for which workers' compensation programs are liable.

(18) State and other governmental Workers' Compensation Agencies working with the Health Care Financing Administration to assure that workers' compensation payments are made where Medicare has erroneously paid and workers' compensation programs are liable.

(19) Release information, without the beneficiary's authorization, to insurance companies, self-insurers, Health Maintenance Organizations, multiple employer trusts and other groups providing protection against medical expenses of their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive this information the entity must agree to the following conditions:

a. To certify that the individual about whom the information is being provided is one of its insureds;

b. To utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. To safeguard the confidentiality of the data and to prevent unauthorized access to it.

(20) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

(21) To an agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the State, if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained;

b. Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;

c. Determines that the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individuals that additional exposure of the record might bring; and

(3) There is reasonable probability that the objective for the use would be accomplished; and

d. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another project under the same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit; or

(d) When required by law; and

(4) Secure a written statement attesting to the recipient's understanding of and willingness to abide by these provisions. The recipient must agree to the following:

(1) Not to use the data for purposes that are not related to the evaluation of cost, quality, and effectiveness of care;

(2) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level when no data cells have ten or fewer beneficiaries); and

(3) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

(22) To insurers, underwriters, third party administrators, self-insurers, group health plans, employers, health maintenance organizations, health and welfare benefit funds. Federal agencies, a State or local government or political subdivision of either (when the organization has assumed the role of an insurer, underwriter, or third party administrator, or in the case of a State that assumes the liabilities of an insolvent insurer, through a State created insolvent insurer pool or fund), multiple-employer trusts, no-fault, medical, automobile insurers, workers' compensation carriers or plans, liability insurers, and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 U.S.C. 1395y(b), or any entity having knowledge of the occurrence of any event affecting (A) an individual's right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment (for example, a State Medicaid Agency, State Workers' Compensation Board, or Department of Motor Vehicles) for the purpose of coordination of benefits with the Medicare program and implementation of the Medicare Secondary Payer provisions at 42 U.S.C. 1395y(b). The information HCFA may disclose will be:

- Beneficiary Name
- Beneficiary Address
- Beneficiary Health Insurance Claim Number
- Beneficiary Social Security Number
- Beneficiary Sex
- Beneficiary Date of Birth
- Amount of Medicare Conditional Payment
- Provider Name and number
- Physician Name and number
- Supplier Name and number
- Dates of Service
- Nature of Service
- Diagnosis

To administer the Medicare Secondary payer provisions at 42 USC 1395y(b) (2), (3), (4) more effectively, HCFA would receive (to the extent that it is available) and may disclose the following types of information from insurers, underwriters, third party administrators, self-insureds, etc.:

- Subscriber Name and Address
- Subscriber Date of Birth
- Subscriber Social Security Number
- Dependent Name
- Dependent Date of Birth
- Dependent Social Security Number
- Dependent Relationship to Subscriber
- Insurer/Underwriter/TPA Name and Address
- Insurer/Underwriter/TPA Group Number
- Insurer/Underwriter/TPA Group Name
- Prescription Drug Coverage
- Policy Number
- Effective Date of Coverage
- Employer Name, Employer Identification Number (EIN) and Address
- Employment Status
- Amounts of Payment

To administer the Medicare Secondary payer provision at 42 USC 12395(b)(1) more effectively for entities such as Workers Compensation carriers or boards, liability insurers, no-fault and automobile medical policies or plans, HCFA would receive (to the extent that it is available) and may disclose the following information:

- Beneficiary's Name and Address
- Beneficiary's Date of Birth
- Beneficiary's Social Security Number*
- Name of Insured*
- Insurer Name and Address
- Type of coverage; automobile medical, no-fault, liability payment, or workers' compensation settlement.
- Insured's Policy Number
- Effective Date of Coverage
- Date of accident, injury or illness
- Amount of payment under liability, no-fault, or automobile medical policies, plans, and workers compensation settlements.
- Employer Name and Address (Workers' Compensation only)
- Name of insured could be the driver of the car, a business, the beneficiary (i.e., the name of the individual or entity which carries the insurance policy or plan).

In order to receive this information the entity must agree to the following conditions:

a. To utilize the information solely for the purpose of coordination of benefits with the Medicare program and other third party payers in accordance with 42 U.S.C. 1395y(b);

b. To safeguard the confidentiality of the data and to prevent unauthorized access to it;

c. To prohibit the use of beneficiary-specific data for purposes other than for the coordination of benefits among third party payers and the Medicare program. This agreement would allow the entities to use the information to determine cases where they or other third party payers have primary responsibility for payment or cases where Medicare has primary responsibility for payment. Examples of prohibited uses would include but are not limited: creation of a mailing list, sale or transfer of data.

—To administer the MSP provisions more effectively, HCFA may receive or disclose the following types of information from or to entities including insurers, underwriters, third party administrators (TPAs), and self-insured plans, concerning potentially affected individuals:

- Subscriber Health Insurance Claim Number
- Dependent Name
- Funding arrangements of employer group health plans, for example, contributory or non-contributory plan, self-insured, re-insured, HMO, TPA insurance
- Claims payment information, for example, the amount paid, the date of payment, the name of the insurer or payer
- Dates of employment including termination date, if appropriate
- Number of full and/or part-time employees in the current and preceding calendar years
- Employment status of subscriber, for example full or part time, self employed

(23) To the Internal Revenue Service for the application of tax penalties against employers and employee organizations that contribute to Employer Group Health Plans or Large Group Health Plans that are not in compliance with 42 U.S.C. 1395y (b).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained on paper forms, magnetic tape and microfilm.

RETRIEVABILITY:

The system is indexed by health insurance claim number. The record is prepared by the hospital or other provider with identifying information received from the beneficiary to establish eligibility for Medicare and document and support payments to providers by the intermediaries. The bill data are forwarded to the Health Care Financing Administration, Bureau of Data Management and Strategy, Baltimore, Md., where they are used to update the central office records.

SAFEGUARDS:

Disclosure of records is limited. The file area is closed to unauthorized personnel. Physical safeguards related to the transmission and reception of the data between Rockville and Baltimore are those requirements established by the DHHS ADP Systems Manual, Part 6.

RETENTION AND DISPOSAL:

Records are closed out at the end of the calendar year in which paid, held 2 more years, transferred to the Federal Records Center and destroyed after another 6 years.

SYSTEM MANAGER(S) AND ADDRESS:

Health Care Financing Administration Director, Division of Provider Procedures, 6325 Security Boulevard, Baltimore, MD 21207.

NOTIFICATION PROCEDURE:

Inquiries and requests for systems records should be addressed to the social security office nearest the requester's residence, the appropriate intermediary, the HCFA Regional Office, or to the system manager named above. The individual should furnish his or her health insurance number and name as shown on social security records. An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the records contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification.

RECORD SOURCE CATEGORIES:

The identifying information contained in these records is obtained by the provider from the individual or, in the case of some Medicare secondary payer situations, through third party contacts. The medical information is entered by the provider of medical services.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A. Health Insurance Claims

Medicare records are maintained at the HCPA Central Office (see section 1 below for the address). Health insurance records of the Medicare program can also be accessed through a representative of the HCFA Regional Office (see section 2 below for addresses). Medicare claims records are also maintained by private insurance organizations who share in administering provisions of the health insurance program. These private insurance organizations, referred to as carriers and intermediaries, are under contract to the Health Care Financing Administration and the Social Security Administration to perform specific tasks in the Medicare program. See section 3 below for addresses for intermediaries and section 4 addresses for carriers.

1. Central Office Addresses:

Bureau of Program Operations, HCFA, 6325 Security Boulevard, Baltimore, Maryland 21207. Office Hours: 8:15–4:45.

Bureau of Data Management and Strategy, HCFA, Office of Health Program Systems, Room 1705, Equitable Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Office Hours: 8:15–4:45

2. HCFA Regional Office Addresses:

BOSTON REGION—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
John F. Kennedy Federal Building, Room 1211, Boston, Massachusetts 02203. Office Hours: 8:30–5:00

NEW YORK REGION—New Jersey, New York, Puerto Rico, Virgin Islands
Federal Plaza—Room 715, New York, New York 10007. Office Hours: 8:30–5:00

PHILADELPHIA REGION—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia
P.O. Box 8460, Philadelphia, Pennsylvania 19101. Office Hours: 8:30–5:00

ATLANTA REGION—Alabama, North Carolina, South Carolina, Florida, Georgia, Kentucky, Mississippi, Tennessee
101 Marietta Street, Suite 702, Atlanta, Georgia 30223. Office Hours: 8:30–4:30

CHICAGO REGION—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin
Suite A—824, Chicago, Illinois 60604. Office Hours: 8:15–4:35

DALLAS REGION—Arkansas, Louisiana, New Mexico, Oklahoma, Texas
1200 Main Tower Building, Dallas, Texas. Office Hours: 8:30–4:30

KANSAS CITY REGION—Iowa, Kansas, Missouri, Nebraska
New Federal Office Building, 601 East 12th Street—Room 436, Kansas City, Missouri 64100. Office Hours: 8:30–4:45

DENVER REGION—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming
Federal Office Building, 1961 Stout St—Room 1185, Denver, Colorado 80294. Office Hours: 8:30–4:30

SAN FRANCISCO REGION—American Samoa, Arizona, California, Guam, Hawaii, Nevada

Federal Office Building, 10 Van Ness Avenue, 20th Floor, San Francisco, California 94102. Office Hours: 8:00–4:30

SEATTLE REGION—Alaska, Idaho, Oregon, Washington

1321 Second Avenue—Room 615, Mail Stop 211, Seattle, Washington 98101. Office Hours: 8:00–4:30

3. Intermediary Addresses (Hospital Insurance):

Medicare Coordinate, Blue Cross/Blue Shield of Alabama, 450 Riverchase Parkway East, Birmingham, Alabama 35298

Medicare Coordinator, Blue Cross of Arizona, Inc., P.O. Box 13466, Phoenix, Arizona 85002

Medicare Coordinator, Arkansas Blue Cross/Blue Shield, Inc., 601 Gaines Street, Little Rock, Arkansas 72203

Medicare Coordinator, Blue Cross of Southern California, P.O. Box 700000, Van Nuys, California 91470

Medicare Coordinator, Blue Cross of Northern California, 1950 Franklin Street, Oakland, California 94659

Medicare Coordinator, Kasier Foundation Health Plan, Inc., 1958 Webster Street, Room 310A, Oakland, California 94612

Medicare Coordinator, Rocky Mountain Hospital and Medical Service, 700 Broadway, Denver, Colorado 80203

Medicare Administrator, Aetna Life & Casualty, 151, Farmington Avenue Hartford, Connecticut 06156

Medicare Coordinator, Blue Cross/Blue Shield Connecticut, 370 Bassett Rd., North Haven, Connecticut 06473

Medicare Administrator, Travelers Ins. Co., One Tower Square, Hartford, Connecticut 06115

Triage, Inc. 719 Middle Street, Bristol Connecticut 06019

Medicare Coordinator, Blue Cross/Blue Shield of Delaware, Inc., 201 West 14th Street, Wilmington, Delaware 19899

Medicare Coordinator, Group Hospitalization, Inc., 550 12th Street, S.W., Washington, D.C. 20024

Medicare Coordinator, Blue Cross of Florida, Inc., P.O. Box 1798, Jacksonville, Florida 32201

Medicare Coordinator, Blue Cross of Georgia/Columbus, P.O. Box 7368, Columbus, Georgia 31906

Medicare Coordinator, Blue Cross of Georgia/Atlanta, P.O. Box 4445, Atlanta, Georgia 30302

Medicare Coordinator, Hawaii Medical Service Association, P.O. Box 860, Honolulu, Hawaii 96808

Medicare Coordinator, Blue Cross of Idaho, Inc., P.O. Box 7480, Boise, Idaho 83707

Medicare Coordinator, Health Care Service Corp., 233 North Michigan Avenue, Chicago, Illinois 60601

Medicare Coordinator, Mutal Hospital Insurance, Inc., 120 West Market Street, Indianapolis, Indiana 46204

Medicare Coordinator, Blue Cross of Iowa, Ruan Building, 636 Grant Avenue, Station 28, Des Moines, Iowa 50307

Medicare Coordinator, Blue Cross of Western Iowa and S. Dakota, Third and Pierce Street, Sioux City, Iowa 51102

Medicare Administrator, Kansas Hospital Service Association, Inc., P.O. Box 239, Topeka, Kansas 66601

Medicare Coordinator, Blue Cross and Blue Shield of Kentucky, Inc., 9901 Linn Station Road, Louisville, Kentucky 40223

Medicare Coordinator, Louisiana Health Service and Indemnity Company, 2718A Wooddale Blvd., Baton Rouge, Louisiana 70805

Medicare Coordinator, Associated Hospital Service of Maine, 110 Free Street, Portland, Maine 04101

Medicare Coordinator, Maryland Blue Cross, Inc., 700 East Joppa Road, Baltimore, Maryland 21204

Medicare Coordinator, Part A. Blue Cross of Mass., Inc., 100 Summer Street, Boston, Massachusetts 02106

Medicare Coordinator, Blue Cross of Michigan, 600 Lafayette East, Detroit, Michigan 48226

Medicare Coordinator, Blue Cross of Minnesota, 3535 Blue Cross Road, St., Paul, Minnesota 55765

Medicare Coordinator, Blue Cross of Miss., P.O. Box 1043, Jackson, Mississippi 39205

Medicare Coordinator, Blue Cross Hospital Service of Missouri, 4444 Forest Park Boulevard, St. Louis, Missouri 63108

Medicare Coordinator, Blue Cross of Montana, P.O. Box 5017, Great Falls, Montana 59403

Medicare Coordinator, Mutual of Omaha Ins. Co., Box 458 Downtown Station, Omaha, Nebraska 68101

Medicare Coordinator, Blue Cross of Nebraska, P.O. Box 3248, Main Post Office Station, Omaha, Nebraska 68103

Medicare Coordinator, New Hampshire Vermont Health Service, 2 Pillsbury Street, Concord, New Hampshire 03306

Medicare Coordinator, Hospital Service Plan of New Jersey, 33 Washington Street, Newark, New Jersey 07102

Medicare Coordinator, Prudential Ins. Co. of America, Drawer 471, 1 Millvelle, New Jersey 08332

Medicare Coordinator, New Mexico Blue Cross Inc., 12800 Indiana School Rd., N.E., Albuquerque, New Mexico 87112

Medicare Coordinator, B/C–B/S of New York, 622 Third Avenue, New York, New York 10017

Medicare Coordinator, North Caroline B/C–B/S, P.O. Box 2291, Durham, North Carolina 27702

Medicare Coordinator, Blue Cross of North Dakota, 4510 13th Avenue, S.W., Fargo, North Dakota 58121

Medicare Coordinator, B/C of N.W. Ohio, P.O. Box 943, Toledo, Ohio 43601

Medicare Coordinator, B/C of N.E. Ohio, 2066 East Ninth Street, Cleveland, Ohio 44115

Medicare Coordinator, Hospital Care Corporation, 1851 William Howard Taft Road, Cincinnati, Ohio 45206

Medicare Coordinator, Nationwide Mutual Insurance Co., P.O. Box 1625, Columbus, Ohio 43216

Medicare Coordinator, B/C of Central Ohio, P.O. Box 16526, Columbus, Ohio 43216

Medicare Coordinator, Blue Cross of Oklahoma, 1215 South Boulder, Tulsa, Oklahoma 74119

Medicare Coordinator, Northwest Hospital Service, P.O. Box 1271, Portland, Oregon 97201

Medicare Coordinator, Blue Cross of Greater Philadelphia, 1333 Chestnut Street, Philadelphia, Pennsylvania 19107

Medicare Coordinator, Blue Cross of Western Pennsylvania. One Smithfield Street, Pittsburgh, Pennsylvania 15222

Medicare Coordinator, B/C of N.E. Pennsylvania, 70 North Main Street, Wilkes-Barre, Pennsylvania 18711

Medicare Coordinator, Hospital Service Plan of Lehigh Valley, 1221 Hamilton Street, Allentown, Pennsylvania 18102

Medicare Coordinator, Capital Blue Cross, 100 Pine Street, Harrisburg, Pennsylvania 17101

Cooperative de Seguros de Vilda de Puerto Rico, G.P.O. Box 3428, San Juan, Puerto Rico 00936

Blue Cross of Rhode Island, 444 Westminster Mall, Providence, Rhode Island 02901

Medicare Coordinator, Blue Cross of S.C., Columbia, South Carolina 29219

Medicare Coordinator, Blue Cross of Tennessee, Blue Cross Bldg., Chattanooga, Tennessee 37402

Medicare Coordinator, Group Hospital Service, Inc., P.O. Box 22146, Dallas, Texas 75222

Medicare Coordinator, B/C of Utah, P.O. Box 30270, Medicare A, Salt Lake City, Utah 84130

Medicare Coordinator, B/C of S.W. Virginia, P.O. Box 13047, 3959 Electric Rd., Roanoke, Virginia 24045

Medicare Coordinator, Blue Cross of Virginia, P.O. Box 27401, Richmond, Virginia 23261

Medicare Coordinator, B/C of Washington/Alaska, Inc., 15700 Dayton Avenue, North, P.O. Box 327, Seattle, Washington 89111

Medicare Coordinator, Parkersburg Hosp. Serv., Inc., P.O. Box 1948, Parkersburg, West Virginia 26101

Medicare Coordinator, Blue Cross Hospital Service Inc., P.O. Box 1353, City Center West Charleston, West Virginia 25325

Medicare Coordinator, Blue Cross of Northern West Virginia Inc., 20th and Chaplin Streets, Wheeling, West Virginia 26003

Medicare Coordinator, Blue Cross/Blue Shield United of Wisconsin, Milwaukee, Wisconsin 53201

Medicare Coordinator, Blue Cross/Blue Shield of Wyoming, P.O. Box 2266, Cheyenne, Wyoming 8200

Health Care Financing Administration, Bureau of Program Operations, Office of Prepaid Operations Staff, 6325 Security Boulevard, Baltimore, Maryland 21207

Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611

Medicare Carriers

Medicare Coordinator, Blue Cross and Blue Shield of Alabama, 450 Riverchase Parkway East, Birmingham, Alabama 35298

Vice President for Medicare and Medical Services, Arkansas Blue Cross and Blue Shield, Inc., 601 Gaines Street, Little Rock, Arkansas 72203

Medicare Coordinator, California Physicians Service, (d/b/a Blue Shield of California), P.O. Box 7013, No. 2 Northpoint, San Francisco, California 94120
Medicare Coordinator, Transamerica Occidental Life Insurance Company, P.O. Box 54905 Terminal Annex, Los Angeles, California 90054
Assistant Vice President, Rocky Mountain Hospital and Medical Service, (d/b/a Blue Cross and Blue Shield of Colorado), 700 Broadway, Denver, Colorado 80273
Medicare Administrator, Travelers Inc. Co., One Tower Square, Hartford, Connecticut 06183
Medicare Administrator, Aetna Life & Casualty, 151 Farmington Avenue, Hartford, Connecticut 06156
Medicare Coordinator, Blue Cross and Blue Shield of Florida, Inc., P.O. Box 1798, Jacksonville, Florida 32231
Health Care Service Corporation, 233 North Michigan Avenue, Chicago, Illinois 60601
Associated Insurance Companies, Inc., (d/b/a Blue Cross and Blue Shield of Indiana), 8320 Craig Street, Suite 100, Indianapolis, Indiana 46250–0453
Assistant Executive Director, Blue Shield of Iowa, Ruan Building, 636 Grand Avenue, Station 28, Des Moines, Iowa 50309
Medicare Assistant, Blue Cross and Blue Shield of Kansas, Inc., P.O. Box 239, Topeka, Kansas 66601
Blue Cross and Blue Shield of Kentucky, Inc., 100 East Vine Street, 6th Floor, Lexington, Kentucky 40517
Medicare Coordinator, Blue Cross and Blue Shield of Maryland, Inc., 700 E. Joppa Road, Baltimore, Maryland 21204
Medicare Coordinator, Part B, Blue Shield of Massachusetts, Inc., 100 Summer Street, Boston, Massachusetts 02110
Assistant Vice President Government Affairs Department, Blue Cross and Blue Shield of Michigan, 600 Lafayette East, Detroit, Michigan 48226
Blue Cross and Blue Shield of Minnesota, P.O. Box 64357, 3535 Blue Cross Road, St. Paul, Minnesota 55164
Vice President Government Programs, Blue Cross and Blue Shield of Kansas City, P.O. Box 169, Kansas City, Missouri 64141
Director, Medicare Administration, General American Life Insurance Co., P.O. Box 505, St. Louis, Missouri 63166
Blue Cross and Blue Shield of Montana, Inc., P.O. Box 4309, 404 Fuller Avenue, Helena, Montana 59601
Medicare Coordinator, Prudential Insurance Co. of America, Tri-City Office Drawer 471, Millville, New Jersey 08332
Director of Medicare Part B, Blue Shield of Western New York, Inc., 298 Main Street, Buffalo, New York 14202
Medicare Coordinator, Group Health Insurance, Inc., 330 West 42nd Street, New York, New York 10036
Medicare Coordinator, Empire Blue Cross and Blue Shield, 622 Third Avenue, New York, New York 10017
Medicare Coordinator, EQUICOR, Inc., 1285 Avenue of the Americas, New York, New York 10019
Medicare Coordinator, Blue Cross and Blue Shield of North Dakota, 4510 13th Avenue, S.W., Fargo, North Dakota 58121
Medicare System and Processing Division, Nationwide Mutual Insurance Company, P.O. Box 16788, Columbus, Ohio 43216
Medicare Coordinator, Pennsylvania Blue Shield, P.O. Box 65, Camp Hill, Pennsylvania 17011
Chief, Internal Operations, Sequros de Servicio de Salud de Puerto Rico 00936–3628
Medicare Coordinator, Blue Cross and Blue Shield of Rhode Island, 444 Westminster Mall, Providence, Rhode Island 02901
Medicare Coordinator, Blue Cross and Blue Shield of South Carolina, Fontaine Business Center, 300 Arbor Lake Drive, Suite 1300, Columbia, South Carolina 29223
Blue Cross and Blue Shield of Texas, Inc., 901 South Central Expressway, P.O. Box 833815, Richardson, Texas 75083–3815
Manager, Part B, Blue Cross and Blue Shield of Utah, P.O. Box 30270, 2455 Parley's Way, Salt Lake City, Utah 84130
Assistant Administrator, Washington Physicians Service, 4th and Battery Building, 2401 4th Avenue, 6th Floor, Seattle, Washington 98121
Director, Medicare Claims Department, Wisconsin Physicians' Service Insurance, Corp., 1717 West Broadway, Monona, Wisconsin 53713

[FR Doc. 90–21236 Filed 9–11–90; 8:45 am]
BILLING CODE 4120–03–M

Health Resources and Services Administration

Program Announcement and Proposed Funding Priority for Cooperative Agreements for Area Health Education Center Programs

The Health Resources and Services Administration (HRSA) announces that applications are now being accepted for fiscal year 1991 Cooperative Agreements for the Area Health Education Centers (AHEC) Program under the authority of section 781(a)(1) of the Public Health Service Act, as amended by Public Law 100–607. Comments are invited on the proposed funding priority stated below.

The Administration's budget request for FY 1991 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 781(a)(1) authorizes Federal assistance to schools of medicine and osteopathic medicine which have cooperative arrangements with one or more public or nonprofit private area health education centers for the planning, development and operation of area health education center programs. Except as modified by the following paragraph, to be eligible to receive support for an Area Health Education Center cooperative agreement, the applicant must be a public or nonprofit private accredited school of medicine or osteopathic medicine or consortium of such schools, or the parent institution on behalf of such school(s). New applications submitted under this authority will be accepted from medicine or osteopathic schools for the purpose of planning, developing and operating new area health education center programs. Applicants may request up to three years of support with the expectation that AHEC's planned and developed in years one and two would be operational no later than the third year.

The Health Professions Reauthorization Act of 1988 (Title VI of Pub. L. 100–607) amended the authority for the Area Health Education Centers program by:

1. Providing for a waiver, under specified circumstances, of the provision now contained in section 781(a)(2)(C) prohibiting an AHEC from being a school of medicine, the parent institution of such a school, or a branch campus or other subunit of a school of medicine or osteopathic medicine or its parent institution, or a consortium of such entities. The waiver of this provision applies to an AHEC having, at the time of initial application for support, an operating program supported by appropriations of a State legislature as well as local resources;

2. Reducing the minimum number of individuals enrolled in first-year positions in a rotating osteopathic internship or a medical residency training program in family medicine, general internal medicine, or general pediatrics from six individuals to four; and

3. Revising the requirement that each AHEC shall "conduct interdisciplinary training and practice involving physicians and other health personnel including, where practicable, physician assistants and nurse practitioners" to add "and nurse midwives."

To receive support, programs must meet the requirements of the regulations as set forth in 42 CFR part 57, subpart MM.

The Bureau of Health Professions, within the Health Resources and Services Administration has substantial

programmatic involvement in the planning, development, and administration of the AHEC projects by:

1. Reviewing and approving plans upon which continuation of the cooperative agreement is contingent in order to permit appropriate direction and redirection of activities;

2. Reviewing and approving all contracts and agreements among recipient medical or osteopathic schools, other health professions schools and community-based centers;

3. Participating with project staff in the development of funding projections;

4. Developing, with project staff, individual project data collection systems and procedures; and

5. Participating with project staff in the design of project evaluation protocols and methodologies.

Section 781(e)(2) of the Act requires that not more than 75 percent of total operating funds of a program in any year shall be provided by the Secretary.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the proposed project adequately provides for the program requirements set forth in 42 CFR 57.3804;

2. The capability of the applicant to carry out the proposed project; and

3. The extent of the need of the area to be served by the AHEC's.

In addition, certain preferential actions may apply in the implementation of this grant program. These categories of actions are defined below:

Funding Preferences

Funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

Funding Priorities

Favorable adjustment of review scores when applications meet specified objective criteria.

Special Consideration

Enhancement of priority scores by merit reviewers based on extent to which applicants address special areas of concern.

The following funding preference, and funding priorities and special consideration were established in FY 1989 after public comment and are being extended in FY 1991.

Funding Preference for Fiscal Year 1991

In making awards for Fiscal Year 1991, a funding preference will be given to competing continuation applications.

Funding Priorities for Fiscal Year 1991

Additionally, funding priorities will be given to the following:

1. Applications proposing centers in which substantial training experience is in a PHS Act section 332 Health Manpower Shortage Area and/or a PHS Act section 329 Migrant Health Center, PHS Act section 330 Community Health Center or State designated clinic/center serving an underserved population.

2. Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient case management of those with HIV infection-related diseases.

3. Applications demonstrating a commitment to geriatrics through development of innovative educational ways to provide improved and more effective are for the elderly.

4. Applications which are innovative in their educational approaches to quality assurance/risk management activities: monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards.

Special Consideration for Fiscal Year 1991

A special consideration will be given to applications proposing centers that will serve Health Manpower Shortage Areas with a greater proportion of disadvantaged American Indian/Alaskan Natives, Asian/Pacific Islanders, Blacks, and/or Hispanics than exists in the general population in the United States.

Proposed Additional Funding Priority for Fiscal Year 1991

A funding priority will be given to applications demonstrating a commitment to reducing infant mortality through the development of innovative educational ways to provide improved and more effective maternal and child health care: for example, the development and implementation of undergraduate, graduate and/or continuing education curricula/courses to enhance the delivery of maternal and child health care to low-income populations; or the provision of clinical training experiences to undergraduate students, graduate students or residents in areas where the infant mortality rate is higher than the State or national average. This is based on data in the September 26, 1989 issuance of Advance Report of Final Mortality Statistics published in the Monthly Vital Statistics, Vol. 38, No. 5 Supplement.

In the Seventh Report to the President and Congress on the Status of Health Personnel in the United States (DHHS, 1990), it is reported that the infant mortality rate of the United States ranked fifteenth among major Western Nations of the world in the mid-1980s and now ranks twenty-first. Reduction of the infant mortality rate from 10 deaths per 1,000 live births to 9 deaths per 1,000 live births is a goal of the U.S. Public Health Service, as stated in The 1990 Health Objectives for the Nation (DHHS, 1986).

Numerous socioeconomic factors contribute to a high infant mortality rate, and a range of approaches are necessary to reduce infant mortality. An educational intervention such as the funding priority proposed is viewed as one of several strategies for targeting resources in an effort to prevent infant deaths.

Interested persons are invited to comment on the proposed funding priority. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the fiscal year 1991 award cycle, this comment period has been reduced to 30 days. All comments received on or before October 12, 1990 will be considered before the final funding priority is established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding priority will be applied.

Written comments should be addressed to:

Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Requests for application materials and questions regarding grants policy should be directed to:

Grants Management Officer (U76), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C–26, Rockville, Maryland 20857, Telephone: (301) 443–6857.

Completed application materials should be returned to the Grants Management Officer at the above address.

Questions regarding programmatic information should be directed to:

Division of Medicine, Multidisciplinary Centers and Programs Branch, Bureau of Health Professions, Health

Resources and Services Administration, 5600 Fishers Lane, room 4C–05, Rockville, Maryland 20857, Telephone: (301) 443–6817.

The standard application form PHS 6025–1 HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The application deadline date is November 9, 1990. Applications will be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline date will be returned to the applicant.

This program is listed at 13.824 in the Catalog of Federal Domestic Assistance. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: August 23, 1990.

John H. Kelso,

Acting Administrator.

[FR Doc. 90–21290 Filed 9–11–90; 8:45 am]

BILLING CODE 4160–15–M

Advisory Council, Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of September 1990:

Name: Subcommittee on Medical Education Programs and Financing of the Council on Graduate Medical Education.

Time: September 26, 1990, 8:30 a.m.

Place: Conference Room G, Parklawn Conference Center, 5600 Fishers Lane, Rockville, MD 20857.

Open for entire meeting.

Purpose: The subcommittee identifies the issues and problems in current methods of financing and support. Assesses the implications of alternative financing policies on medical education programs, service delivery, cost containment, physician supply & distribution, and shortages and excesses of physicians.

Analyzes existing information and data on current and alternative medical education programs of hospitals, schools of medicine and osteopathy, and accrediting bodies; federal policies regarding medical education programs; and their impact on the supply and distribution of physicians.

Agenda: (1) The Subcommittee will focus on predoctoral training in the ambulatory setting. Presentations will discuss characteristics of quality programs and focus on model programs from family medicine, general pediatrics, and general internal medicine. Presenters will also talk about effective faculty development of clinical teachers in ambulatory settings.

Anyone requiring information regarding the subject Subcommittee should contact Dona Harris, Ph.D., Scholar-in-Residence, Division of Medicine, Bureau of Health Professions, room 4C–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6326.

Name: Subcommittee on Physician Manpower of the Council on Graduate Medical Education.

Time: September 26, 1990, 9 a.m.–5 p.m.

Place: Chesapeake Room, Parklawn Conference Center, 5600 Fishers Lane, Rockville, MD 20857.

Open for entire meeting.

Purpose: The subcommittee reviews and analyzes currently applicable studies of under and oversupply of physician manpower giving special attention to number and distribution of specialists, primary care physicians and resident. It also is concerned with studies and recommendations regarding the number of undergraduate medical students as well as the need for improving physician manpower data.

Agenda: Briefing of contractor activities on project to reexamine the adequacy of physician personnel supply made in 1980 by GMENAC for six physician specialities. Review of activities for Second COGME Report. In addition, the Subcommittee will hold a series of presentations by HRSA senior staff on policy initiatives concerning the geographic distribution of physicians.

Anyone requiring information regarding the subject Subcommittee should contact Jerald M. Katzoff, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6326.

Name: Subcommittee on Minority Representation in Medicine of the Council on Graduate Medical Education.

Time: September 26, 1990, 6 p.m.–10 p.m.

Place: Days Inn, Georgetown, Rooms 1 and 2, Rockville, Maryland 20852.

Open for entire meeting.

Purpose: To review and discuss final draft of the section on the underrepresentation of minorities in medicine of the COGME Special Report.

Agenda: To provide a forum for reviewing and discussing the materials and information presented at the August 15 Subcommittee on minorities participation in medical education and to identify specific data needs and issues relative to conclusions and future recommendations.

Anyone requiring information regarding the subject Subcommittee should contact Ronald L. Craig, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6326.

Name: Council on Graduate Medical Eduation.

Time: September 27, 1990, 8:30 a.m.–5 p.m.

Place: Conference Room C, Parklawn Conference Center, 5600 Fishers Lane, Rockville, MD 20857.

Open for entire meeting.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: The Council will receive legislative updates from Health

Resources and Service Administration, Health Care Financing Administration, and the Department of Veterans' Affairs, and will receive reports from the subcommittee meetings of the day before. A plenary discussion will take place on the results of a contract to make needs-based estimates requirements for six physicians in specialities.

Anyone requiring information regarding the subject Council should contact Marilyn H. Gaston, M.D., Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, room 4C–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6190.

Agenda Items are subject to change as priorities dictate.

Dated: September 6, 1990.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 90–21375 Filed 9–11–90; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

Recombinant DNA Research: Actions Under the Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth four actions to be taken by the Director, National Institutes of Health (NIH), under the May 7, 1986, NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958).

EFFECTIVE DATE: September 12, 1990.

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Office of Science Policy and Legislation, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

SUPPLEMENTARY INFORMATION: Today four actions are being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules. These four actions were published for comment in the **Federal Register** of February 27, 1990 (55 FR 6954), and June 27, 1990 (55 FR 26348), and reviewed and recommended for approval by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on March 30, 1990, and July 31, 1990.

I. Background Information and Decisions on Action Under the "NIH Guidelines".

A. Amendment of Appendix D–XIII of the "NIH Guidelines"

In a memorandum dated February 6, 1990, Drs. W. French Anderson, R. Michael Blaese, and Steven A. Rosenberg of the National Institutes of Health requested that the patient number limitation be removed from the human gene transfer protocol which involves the transfer of the gene for neomycin resistance into tumor infiltrating lymphocytes. The current protocol is approved for 10 patients. No changes in the protocol itself are requested; it would continue as previously approved.

This request was published for comment in the **Federal Register** of February 27, 1990 (55 FR 6954).

The initial approval of Appendix D–XIII (54 FR 10510) was based on the following four stipulations:

1. There will be no more than 10 patients in the initial trial;
2. The patients selected will have a life expectancy of about 90 days;
3. The patients give fully informed consent to participate in the trial; and
4. The investigators will provide additional data before expanding the trial by adding patients or by inserting a gene for therapeutic purposes.

At a meeting on March 30, 1990, the Human Gene Therapy Subcommittee (a subcommittee of the Recombinant DNA Advisory Committee) considered the request to remove the limit on the number of patients. The investigators presented an interim report on the first six patients who were studied. The subcommittee unanimously approved the request to remove the patient number limitation on the protocol described in appendix D–XIII and recommended approval to the Recombinant DNA Advisory Committee.

The Recombinant DNA Advisory Committee considered this amendment at the March 30, 1990, meeting. Again, the investigators presented an interim report on the first six patients who were studied. By a vote of 20 in favor, 0 opposed, and no abstentions, the committee approved the motion to accept the recommendation of the subcommittee.

Therefore, the stipulations imposed on appendix D–XIII will read:

1. There will be no limitation on the number of patients in the continuing trial;
2. The patients selected will have a life expectancy of about 90 days;
3. The patients give fully informed consent to participate in the trial; and
4. The investigators will provide additional data before inserting a gene for therapeutic purposes.

I accept this recommendation, and appendix D–XIII of the NIH Guidelines is amended accordingly.

B. Addition of Appendix D–XV to the "NIH Guidelines"

In a memorandum dated February 12, 1990, Drs. R. Michael Blaese and W. French Anderson of the National Institutes of Health indicated their intention to submit a human gene therapy clinical protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is "Treatment of Severe Combined Immunodeficiency Disease (SCID) Due to Adenosine Deaminase (ADA) Deficiency with Autologous Lymphocytes Transduced with a Human ADA Gene."

This request was published for comment in the **Federal Register** on February 27, 1990 (55 FR 6954).

The Human Gene Therapy Subcommittee considered the request at its meeting of March 30, 1990. After extensive discussion, the subcommittee deferred approval of this protocol pending formulation of a response from the investigators to certain terms of the Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects. Further, primary and secondary reviewers were asked to prepare written critiques of the protocol and supply the same to the subcommittee and to the investigators.

This request was published for comment in the **Federal Register** on May 7, 1990 (55 FR 18966).

During the meeting on June 1, 1990, the Human Gene Therapy Subcommittee continued discussion of the clinical protocol. They recommended provisional approval with the following points to be definitively addressed at the next subcommittee meeting on July 30, 1990. They are:

1. That the consent form be revised and be reviewed and accepted by the Recombinant DNA Advisory Committee at its next meeting;
2. That a stronger warning with regard to the potential for malignancy be inserted into the consent form;
3. That a stop criterion of two therapy-related deaths be inserted;
4. That intraperitoneal infusions not be utilized without further approval by this committee;
5. That proceeding to part 2B of this protocol would require approval by the Institutional Biosafety Committee and the Institutional Review Board.

6. The full data from the Milan experiments and any related data be provided for review by a subcommittee of this committee prior to a meeting of the Recombinant DNA Advisory Committee and that a formal review of those data be brought to the Recombinant DNA Advisory Committee when this protocol comes up for approval.

7. That a final version of the inclusion/exclusion criteria reflect the parameters that were addressed in the subcommittee discussion, including the age and length of time on PEG–ADA; and

8. That a specific protocol be provided for the follow-up evaluation of the immunological and clinical status.

This request was published for comment in the **Federal Register** of June 27, 1990 (55 FR 26348).

During the meeting on July 30, 1990, the Human Gene Therapy Subcommittee discussed the eight points that were enumerated at the meeting of June 1, 1990. The responses to these points and the modifications in the protocol were deemed to be satisfactory. Accordingly, the subcommittee recommended to the Recombinant DNA Advisory Committee approval of the protocol in its current form.

During the meeting on July 31, 1990, the Recombinant DNA Advisory Committee met to review the protocol and recommendations from the subcommittee. Following lengthy discussion, the Recombinant DNA Advisory Committee by a vote of 16 in favor, 1 opposed, and no abstentions, approved the protocol with the following section to be added to appendix D:

Appendix D–XV

Drs. R. Michael Blaese and W. French Anderson of the National Institutes of Health, Bethesda, Maryland, can conduct experiments in which a gene coding for adenosine deaminase (ADA) will be inserted into T lymphocytes of patients with severe combined immunodeficiency disease, using a retroviral vector, LNL6. Following the insertion of the gene, the T lymphocytes will be reinfused into the patients. The patients will then be followed for evidence of clinical improvement in their disease state, and measurement of multiple parameters of immune function by laboratory testing.

Approval is based on the following two stipulations:

1. That intraperitoneal administration of transduced T lymphocytes not be used before clearance by the Chairs of the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee; and

2. That the number of research patients be limited to 10 at this time.

I accept this recommendation, and Appendix D–XV of the NIH Guidelines will be added accordingly.

C. Addition of Appendix D–XVI of the NIH Guidelines

In a letter dated June 13, 1990, Dr. Steven A. Rosenberg of the National Institutes of Health indicated his intention to submit a human gene therapy protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee. The title of this protocol is "Gene Therapy of Patients with Advanced Cancer using Tumor Infiltrating Lymphocytes Transduced with the Gene Coding for Tumor Necrosis Factor."

This request was published for comment in the **Federal Register** on June 27, 1990 (55 FR 26348).

The Human Gene Therapy Subcommittee considered the request at its meeting on July 30, 1990. After extensive discussion, the subcommittee decided that the three provisions listed below, as requested by the NIH Institutional Biosafety Committee, had been adequately addressed by the investigator. They are:

1. Performance of primate toxicity studies;

2. Studies using neutralizing antibody to tumor necrosis factor; and

3. Additional data from experiments which study the trafficking patterns of tumor infiltrating lymphocytes.

The subcommittee then recommended to the Recombinant DNA Advisory Committee approval of the protocol.

The protocol was presented to the Recombinant DNA Advisory Committee at its meeting of July 31, 1990.

During the deliberation, the Recombinant DNA Advisory Committee considered matters related to the toxicity of tumor necrosis factor (TNF) in patients, and the means by which such toxicity would be treated.

Finally, the protocol was approved by a vote of 17 in favor, 0 opposed, and no abstentions, with the provision that the final consent form be reviewed administratively by the NIH Office for Protection from Research Risks and that the NIH Institutional Biosafety Committee approve the final revised version of the protocol.

As a result, the following section will be added to Appendix D:

Appendix D–XVI

Dr. Steven A. Rosenberg of the National Institutes of Health, Bethesda, Maryland, can conduct experiments on patients with advanced melanoma who have failed all effective therapy. These patients will be treated with escalating doses of autologous tumor infiltrating lymphocytes (TIL) transduced with a gene coding for tumor necrosis factor. Escalating numbers of transduced TIL will be administered at three weekly intervals along with the administration of interleukin-2. The objective is to evaluate the toxicity and possible therapeutic efficacy of the administration of tumor infiltrating lymphocytes (TIL) transduced with the gene coding for tumor necrosis factor (TNF).

I accept this recommendation, and appendix D–XVI of the *NIH* Guidelines will be added accordingly.

D. Amendment to the "Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects"

During the meeting of June 1, 1990, the Human Gene Therapy Subcommittee recommended a procedure for expediting reviews on approved human gene therapy protocols. The following policy was proposed for discussion, approval, and addition to the document entitled, "Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects." The proposal is as follows:

A minor change in a protocol approved by the Human Gene Therapy Subcommittee, that is, a change that does not significantly alter the basic design of a protocol and that does not increase risk to the subjects, may be approved by the Chair of the Subcommittee if the change has also been approved by the relevant IRB and by the Institutional Biosafety Committee. The Chair will report on any such approvals at the next regularly scheduled meeting of the Subcommittee.

This amendment was published for comment in the **Federal Register** on June 27, 1990 (55 FR 26348).

The Recombinant DNA Advisory Committee considered this amendment at its meeting on July 31, 1990. The intent of this amendment is to allow minor changes in protocols without having to wait for the next scheduled meetings of the RAC Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee. No such provision existed in the original Points to Consider document.

After discussion, the Recombinant DNA Advisory Committee approved the amendment with a vote of 17 in favor, 0 opposed, and no abstentions. The following section will be added to the "Points to Consider" document:

V. Minor Modifications

A minor change in protocol approved by the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee is a change that does not significantly alter the basic design of a protocol and that does not increase risk to the subjects. If the change has been approved by the relevant Institutional Review Board, Institutional Biosafety Committee, and Chair of the Human Therapy Subcommittee, then the

Chair of the Recombinant DNA Advisory Committee may give approval. It is expected that the Chairs of either committee will consult with one or more members of the committee, as necessary. The Chairs will report on any such approvals at the next regularly scheduled meetings of the respective committees.

I accept this recommendation, and section V will be added to the "Points to Consider" document.

II. Summary of Actions

A. Amendment of Appendix D–XIII of the "NIH Guidelines"

The amended version of Appendix D–XIII reads as follows:

Approval is based on the following four stipulations:

1. There will be no limitation of the number of patients in the continuing trial.
2. The patients selected will have a life expectancy of about 90 days.
3. The patients give fully informed consent to participate in the trial; and
4. The investigators will provide additional data before inserting a gene for therapeutic purposes.

B. Addition of Appendix D-XV to the "NIH Guidelines"

The following section is added to Appendix D:

Appendix D-XV

Drs. R. Michael Blease and W. French Anderson of the National Institutes of Health, Bethesda, Maryland, can conduct experiments in which a gene coding for adenosine deaminase (ADA) will be inserted into T lymphocytes of patients with severe combined immunodeficiency disease, using a retroviral vector, LNL6. Following insertion of the gene, these T lymphocytes will be reinfused into the patients. The patients will then be followed for evidence of clinical improvement in the disease state, and measurement for multiple parameters of immune function by laboratory testing.

Approval is based on the following two stipulations:

1. That intraperitoneal administration of transduced T lymphocytes not be used before clearance by the Chairs of the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee; and
2. That the number of research patients be limited to 10 at this time.

C. Addition of Appendix D-XVI of the "NIH Guidelines"

The following section is added to Appendix D:

Appendix D-XVI

Dr. Steven A. Rosenberg of the National Institutes of Health, Bethesda, Maryland, can conduct experiments on patients with advanced melanoma who have failed all effective therapy. These patients will be treated with escalating doses of autologous tumor infiltrating lymphocytes (TIL) transduced with a gene coding for tumor necrosis factor. Escalating numbers of transduced TIL will be administered at three weekly intervals along with the administration of interleukin-2. The objective is to evaluate the toxicity and possible therapeutic efficacy of the administration of tumor infiltrating lymphocytes (TIL) transduced with the gene coding for tumor necrosis factor (TNF).

D. Admendment to the "Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects"

The following section is added to the "Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects:"

V. Minor Modifications

A minor change in protocol approved by the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee is a change that does not significantly alter the basic design of a protocol and that does not increase risk to the subjects. If the change has been approved by the relevant Institutional Review Board, Institutional Biosafety Committee, and Chair of the Human Gene Therapy Subcommittee, then the Chair of the Recombinant DNA Advisory Committee may then give approval. It is expected that the Chairs of either committee will consult with one or more members of the committees, as necessary. The Chairs will report on any such approvals at the next regularly scheduled meetings of the respective committees.

OMB's Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: September 6, 1990.

William F. Raub,

Ph.D. Acting Director, National Institutes of Health.

[FR Doc. 90–21490 Filed 9–11–90; 8:45 am]

BILLNG CODE 4140-01-M

Public Health Service

Office of the Assistant Secretary for Health

Privacy Act of 1974; Alteration of System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of an altered system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing notice of alterations to system of records: 09–15–0054, "National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners, HHS/HRSA/BHPr." The section on Category of Records is being revised to include all information received by the Bank for audit purposes. The section on Categories of Individuals is being revised to clarify that all health care practitioners who are the subject of inquiries made to the Bank are included in the system. Other technical, editorial clarifications also are being made.

DATES: PHS invites interested parties to submit comments on or before October 12, 1990. PHS has sent a Report of Altered System to the Congress and to the Office of Management and Budget (OMB) on September 4, 1990. The alteration to the system will be effective 60 days from the date submitted to OMB unless PHS receives comments which would result in a contrary determination.

ADDRESSES: Please address comments to the Health Resources and Services Administration (HRSA) Privacy Act Coordinator, Department of Health and Human Services, Parklawn Building, Room 14A–20, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–3780. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: Director, Division of Quality Assurance and Liability Management BHPr/HRSA, Room 8–67, Parklawn Buiding, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–2300. This is not a tool-free number.

SUPPLEMENTARY INFORMATION: On September 14, 1987, 52 FR 34723, the Bureau of Health Professions, HRSA,

originally published a notice establishing this system of records under the title, "Health Care Practitioner Adverse Credentialing Data Bank, HHS/HRSA/BHPr." The establishment of the Bank was mandated by the Health Care Quality Improvement Act of 1986 (Pub. L. 99–660), which was amended by the Public Health Amendments of 1987 (Pub. L. 100–177), the title IV Final Regulations were published on October 17, 1989, 54 FR 42722, and a revised System of Records was published on Febuary 28, 1990, 55 FR 7035, to reflect changes necessitated by these amendments and the Final Regulations.

One comment was received on that revised System of Records notice, regarding a certain provision of routine use number six (6). The concern was that Professional Review Organizations (PROs), as entities having contracts with the Federal Government to sanction practitioners under the Medicare program, would be considered to be Federal entities and therefore eligible to have access to information reported to the Bank under part B of title IV of the Health Care Quality Improvement Act of 1986. This is not the case. PROs are neither Federal entities nor are they eligible to request information that was reported to the Bank under the title IV requirements. (PROs will, however, be able to request information that is reported to the Bank under section 5 of the Medicare and Medicaid Patient and Program Protection Act of 1987 Public L. 100–93).

Since it appears that the meaning of the term "Federal entity," as used in routine use number six (6), may be unclear to some readers, we have replaced it with the term "Federal agency." Becasue the latter term is used widely, even in common parlance, it should be very clear that PROs are not Federal agencies.

The section entitled, Categories of Individuals Covered by the System, is being revised to include all health care practitioners who are the subject of inquiries made to the Bank. Maintenance of the inquiry file is an essential function of operating the Bank. To operate the Bank in a responsible manner, it is necessary to keep a record of when, by whom, and about whom the Bank was queried. It is important to note that information in the inquiry file will not be disclosed under any routine use other than routine use number seven.

Furthermore, the Category of Records is expanded to include an audit trail file so as to permit a complete and effective computer security audit trail. The audit trail file consists of informaiton for which corrections have been made in the Bank. Effective system security necessitates a complete audit trail, including an information audit trail file, to facilitate detection of unauthorized activity; therefore, no data can be expunged. Without such an audit trail the required computer system certification cannot be obtained. PHS is instituting strict security measures to prevent the dissemination of audit file data. These data will be extracted from the Bank and placed on a removable storage medium with strictly controlled access.

Note: Expunging the audit file data creates the situation whereby unauthorized changes, be they intentional or unintentional, can be made to the Bank without possibility of detection by simulation or masquerading as a corrective action.

We have also made editorial changes throughout the system notice to enhance clarity and specificity and to accommodate normal updating changes.

The following notice is written in the present tense, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the alteration becomes effective.

Dated: September 5, 1990.

Wilford J. Forbush,

Director, Office of Management.

09–15–0054

SYSTEM NAME:

National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners, HHS/HRSA/BHPr.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The Unisys Corporation (the Contractor) operates the National Practitioner Data Bank (the Bank) under contract with the Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA). Records are located at the following addresses: (1) National Practitioner Data Bank, P.O. Box 6050, Camarillo, California 93011–6050; and (2) Unisys Corporation, 8301 Greensboro Drive, McLean, Virginia 22102.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Health care practitioners, who are the subjects of reports made to the Bank, including physicians, dentists, and all other health care practitioners (such as nurses, optometrists, pharmacists, and podiatrists), licensed or otherwise authorized by a State to provide health care services, on whom behalf a payment has been made as a result of a malpractice action or claim;

2. Physicians and dentists who are the subjects of licensure disciplinary actions;

3. Physicians, dentists and other health care practitioners who are on medical staffs or who hold clinical privileges, or who are members of professional societies, against whom certain adverse actions have been taken as a result of a professional review action;

4. All health care practitioners who are the subjects of inquiries to the Bank.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. *For malpractice payments.* Information on the physician, dentist or other licensed health care practitioner such as name; work address; home address, if known; Social Security number, if known and obtained in accordance with section 7 of the Privacy Act of 1974; date of birth; name of each professional school attended and year of graduation; for each professional license: The license number, the field of licensure, and the name of the State or Territory in which the license is held; Drug Enforcement Administration registration number(s), if known; and name of each hospital with which the practitioner is affiliated, if known.

Information on the person or entity making the payment, such as the name and address of the person or entity making the payment; and the name, title, and telephone number of the authorized representative submitting the report on behalf of the entity.

Information on the payment, such as the date of occurrence of the acts or omissions upon which the action or claim was based occurred; date and amount of payment; description of the acts or omissions and injuries or illnesses upon which the action or claim was based; and classification of the acts or omissions per reporting code.

2. *For State Medical or Dental Board actions.* Information such as: The physician's or dentist's name; work address; home address, if known; Social Security number, if known and if obtained in accordance with section 7 of the Privacy Act of 1974; date of birth; name of each professional school attended and year of graduation; for each professional license: the license number, the field of licensure, and the name of the State or Territory in which the license is held; Drug Enforcement Administration registration number, if known; description of the acts or omissions or other reasons for the action taken; description of the Board action; the date the action was taken, and its

effective date; and classification of the action per reporting code.

3. *For certain professional review actions.* Information such as the physician's, dentist's or other health care practitioner's name; work address; home address, if known; date of birth; name of each professional school attended and year of graduation; for each professional license: The license number, the field of licensure, and the name of the State or Territory in which the license is held; Drug Enforcement Administration registration number, if known; Social Security number, if known and if obtained in accordance with section 7 of the Privacy Act of 1974; description of the acts or omissions or other reasons for clinical privilege or professional society membership loss, or, if known, for surrender; and action taken, date the action was taken, and effective date of the action.

4. *Inquiry File.* Copies of all inquiries received by the Bank. No disclosure will be made of this information except under routine use 7.

5. *Audit Trail File.* Information for which corrections have been made in the Bank is maintained in a separate storage medium solely to permit a complete and effective computer security audit trail.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Health Care Quality Improvement Act of 1986 (the Act), as amended, Section 424(b) (42 U.S.C. 11134(b)) authorizes the maintenance of records of medical malpractice payments, disciplinary actions taken by Boards of Medical Examiners, and adverse professional review actions taken by health care entities.

PURPOSES:

The purposes of the system are to (1) receive from insurance companies and others making payments as a result of malpractice actions or claims, State Medical and Dental Boards, and health care entities, information pertaining to the professional performance or conduct of physicians, dentists and other licensed health care practitioners; (2) disseminate such data to health care entities, to State professional licensing boards, and to others authorized by the Act; and (3) respond to inquiries from health care entities authorized by the Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data may be disclosed to:

1. A hospital requesting data concerning a physician, dentist or other health care practitioner who is on its medical staff (courtesy or otherwise) or who has clinical privileges at the hospital, for the purpose of: (a) Screening the professional qualifications of individuals who apply for staff positions or clinical privileges at the hospital; and (b) meeting the requirements of the Health Care Quality Improvement Act of 1986, which also prescribes that a hospital must query the Bank once every two years rearding all individuals on its medical staff or who hold clinical privileges.

2. Other health care entities, as defined in 42 CFR 60.3, to which a physician, dentist or other health care practitioner has applied for clinical privileges or appointment to the medical staff or who has entered or may be entering an employment or affiliation relationship. The purpose of these disclosures is to identify individuals whose professional performance or professional conduct may be unsatisfactory.

3. A health care entity with respect to professional review activity. The purpose of these disclosures is to aid health care entities in the conduct of professional review activities, such as those involving determinations of whether a physician, dentist, or other health care practitioner may be granted membership in a professional society; the conditions of such membership, or of changes to such membership; and ongoing professional review activities conducted by a health care entity which provides health care services, of the professional performance or professional conduct of a physician, dentist, or other health care practitioner.

4. A State professional licensing board conducting a review of an individual. The purpose of these disclosures is to aid the board in meeting its responsibility to protect the health of the population in its jurisdiction, by identifying individuals whose professional performance or professional conduct may be unsatisfactory.

5. An attorney, or individual representing himself or herself, who has filed a medical malpractice action or claim in a State or Federal court or other adjudicative body against a hospital, and who requests information regarding a specific physician, dentist, or other health care practitioner who is also named in the action or claim provided that (a) this information will be disclosed only upon the submission of evidence that the hospital failed to request information form the Bank as required by law, and (b) the information will be used solely with respect to litigation resulting from that action or claim against the hospital.

6. Any Federal agency, employing or otherwise engaging under arrangement (e.g., such as a contract) the services of a physician, dentist, or other health care practitioner, or having the authority to sanction such practitioners covered by a Federal program, which (a) enters into a memorandum of understanding with HHS regarding its participation in the Bank; (b) engages in a professional review activity in determining an adverse action against a practitioner; and, (c) maintains a Privacy Act system of records regarding the health care practitioners it employs, or whose services it engages under arrangement. The purpose of such disclosures is to enable hospitals and other facilities and health care providers under the jurisdiction of Federal agencies such as the Public Health Service, HHS; the Department of Defense; the Department of Veterans' Affairs; the U.S. Coast Guard; and the Bureau of Prisons, Department of Justice, to participate in the Bank.

7. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim if successful, is likely to affect directly the operation of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, for example in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosures may be made to the Department of Justice to enable the Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, on magnetic tape, microfilm, and/or in disk packs.

RETRIEVABILITY:

Retrieval will be by use of personal identifiers, including a unique identifier assigned by the Bank.

SAFEGUARDS:

1. Authorized Users: Access to records is limited to designated

employees of the Contractor and to designated HRSA staff. The Bank Project Director, Assistant Project Director, and Manager of Operations are among the Contractor's employees who are authorized users. The System Manager, AIS Security Officer, and the Bank Project Officer are among the HRSA staff who are authorized users. Both HRSA and the Contractor shall maintain current lists of authorized users.

2. Physical Safeguards: Magnetic tapes, microfilms, disk packs, computer equipment, and hard copy files are stored in areas where fire and life safety codes are strictly enforced. All automated and nonautomated documents are protected on a 24-hour basis. Perimeter security includes intrusion alarms, on-site guard force, random guard patrol, monitors, key/passcard/combination controls, receptionist controlled area, and receptionist alarm button.

3. Procedural Safeguards: A password is required to access the terminal, and a software security system controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised area. All authorized users will sign a nondisclosure statement. All passwords, keys and/or combinations are changed when a person leaves or no longer has authorized duties. Procedures are followed for monitoring automatic auditing capability to record use activity (system logs, console logs, etc.). Periodic security audits of the system will be conducted.

Access to records is limited to those authorized personnel trained in accordance with the Privacy Act and ADP security procedures. The Contractor is required to assure the confidentiality safeguards of these records and to comply with all provisions of the Privacy Act. All individuals who have access to these records must have the appropriate ADP security clearances. Privacy Act and ADP system security requirements are included in the contract with the Unisys Corporation. The Bank Project Officer and the System Manager oversee compliance with these requirements. HRSA staff who are authorized users will make site visits to the Contractor's facilities to assure compliance with security and Privacy Act requirements.

The safeguards described above were established in accordance with DHHS chapter 45–13 and supplementary chapter PHS hf: 45–13 of the General Administration Manual; and the DHHS Information Resources Management Manual, Part 6, "ADP Systems Security."

RETENTION AND DISPOSAL:

Retention and Disposal is made in accordance with the HRSA Records schedule. Contact the System Manager at the following address for further information.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Quality Assurance and Liability Management, Bureau of Health Professions, Health Resources and Services Administration, Room 8–67, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

An individual is informed when a record concerning himself or herself is entered into the Bank.

Requests by mail: To determine if a record exists about you, write to the Contractor at the Camarillo, California address under system location. Your request must be on the Bank's "Request for Information Disclosure" form and must contain all the required information. The form requires a signed statement that you are the person whom you claim to be and that you understand that the request for records (or acquisition of records pertaining to another individual) under false pretenses is a criminal offense subject to, at a minimum, a $5,000 fine under provisions of the Privacy Act and to a $10,000 fine under provisions of the Health Care Quality Improvement Act of 1986.

To obtain the "Request for Information Disclosure" form you may write to the contractor at the Camarillo, California system location, or call the toll free number 1–800–767–6732.

Requests in person: No requests in person at the system location will be honored.

Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURES:

Same as notification procedures Requesters should also provide a description of the record contents being sought. Requesters also may request an accounting of disclosures that have been made of their records, if any.

PROCEDURES FOR CONTESTING RECORDS:

Any record subject may contest the accuracy of information in the Bank concerning himself or herself and file a dispute. The Bank will routinely mail a copy of any report filed in it to the subject individual. The record subject has 60 days from the date on which the Bank mails the report in question to him or her in which to dispute the accuracy of the report. To dispute the accuracy of the information, the individual must notify the Bank. Additional information on the process of dispute resolution can be found at 45 CFR part 60, § 60.14 or may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Individuals whose records are contained in the system; insurance companies and others who have made payment as a result of a malpractice action or claim; State Medical Boards; State Boards of Dentistry; State Licensing Boards; hospitals and other health care entities as defined in the Act; the Drug Enforcement Administration; and Federal agencies which employ health practitioners or which have authority to sanction such practitioners covered by a Federal program.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 90–21374 Filed 9–11–90; 8:45 am]
BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–90–3149]

Privacy Act of 1974; a Computer Matching Program

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Notice of a computer matching program—HUD and Department of Veterans Affairs (VA).

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, as amended, (Public Law 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public," the Department of Housing and Urban Development (HUD) is issuing a public notice of its intent to conduct a computer matching program with the Department of Veterans Affairs (VA) to utilize a computer information system of HUD, the Credit Alert Interactive Voice

Response System (CAIVRS), with VA's debtor files. This match will allow prescreening of applicants for loans or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal Government for HUD or VA direct or guaranteed loans.

Before granting a loan, the lending agency and/or the authorized lending institution will be able to interrogate the CAIVRS debtor file which contains the Social Security Numbers (SSNs) of HUD's delinquent debtors and defaulters and defaulted debtor records of the VA and verify that the loan applicant is not in default or delinquent on direct or guaranteed loans of participating Federal programs of either agency. Authorized users place a telephone call to the system. The system provides a recorded message followed by a series of instructions, one of which is a requirement for the SSN of the loan applicant. The system then reports audibly whether the SSN is related to delinquent or defaulted Federal obligations for HUD or VA direct or guaranteed loans. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision of any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has indepedently verified such informatiom.

DATES: Effective Date: Computer matching is expected to begin in October 1990, and unless comments are received which will result in a contrary determination, will be accomplished 18 months from the beginning date. Comments Due Date: October 12, 1990.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708–4337. Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 708–2084). (These are not toll-free numbers.)

FOR PRIVACY ACT INFORMATION CONTACT: Donna L. Eden, Departmental Privacy Act Officer, telephone number (202) 708–0050. (This is not a toll-free telephone number.)

FOR FURTHER INFORMATION FROM RECIPIENT AGENCY CONTACT: Mary Felton, Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development, 451 7th St., SW., Room 2118, Washington, DC 20410, telephone number (202) 708–1941. (This is not a toll-free number.)

FOR FURTHER INFORMATION FROM SOURCE AGENCY CONTACT: Dan Osendorf, Chief, Debt Collection Staff, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone number (202) 233–2853. (This is not a toll-free number.)

Reporting

In accordance with Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and Office of Management and Budget Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congres and the Public;" copies of this Notice and report, in duplicate, are being provided to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

Authority

The matching program may be conducted pursuant to Public Law 100–503, "The Computer Matching and Privacy Protection Act of 1988," as amended, and Office of Management and Budget (OMB) Circulars A–129 (Managing Federal Credit Programs) and A–70 (Policies and Guidelines for Federal Credit Programs). One of the purposes of all Executive departments and agencies—including HUD—is to implement efficient management practices for Federal credit programs. OMB Circulars A–129 and A–70 were issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and accounting Act of 1950, as amended; the Debt Collection Act of 1982, as amended; and, the Deficit Reduction Act of 1984, as amended.

Objectives to be met by the matching program

The matching program will allow VA acces to a system which permits prescreening of applicants for loans or loans guarranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Government. In addition, HUD will be provided acces to VA debtor data for prescreening purposes.

Records to be matched

HUD will utilize its system of records entitled HUD/DEPT–2, Accounting Records. The debtor files for HUD programs involved are included in this system of records. HUD's debtor files contain information on borrowers and co-borrowers who are currently in default (at least 90 days delinquent on their loans); or who have any outstanding claims paid during the last three years on Title II insured or guaranteed home mortgage loans; or individuals who have defaulted on Section 312 rehabilitation loans; or individuals who have had a claim paid in the last three years on a Title I loan. For the CAIVRS match, HUD/DEPT–2, System of Records, receives its program inputs from HUD/DEPT–28, Property Improvement and Manufactured (Mobile) Home Loans—Default; HUD-DEPT–32, Delinquent/Default/Assigned Temporary Mortgage Assistance Payments (TMAP) Program; and HUD/CPD–1, Rehabilitation Loans–Delinquent/Default.

The VA will provide HUD with debtor files contained in its system of records entitled SS–VA26, Loan Guaranty Systems of Records. Central Accounts Receivable On Line System is a subsidiary of SS–VA26. HUD is maintaining VA's records only as a ministerial action on behalf of VA, not as a part of HUD's HUD/DEPT–2 system of records. VA's data contain information on individuals who have defaulted on their guaranteed loans. The VA will retain ownership and responsibility for their systems of records that they place with HUD. HUD serves only as a record location and routine use recipient for VA's data.

Notice procedures

HUD and the VA will notify individuals at the time of application (ensuring that routine use appears on the application form) for guaranteed or direct loans that their records will be matched to determine whether they are delinquent or in default on a Federal Debt. HUD and the VA will also publish notices concerning routine use

disclosures in the Federal Register to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the Federal Government.

Categories of records/individuals involved

The debtor records include these data elements: SSN, claim number, program code, and indication of indebtedness. Categories of records include: Records of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures

Categories of individuals include: Former mortgagors and purchasers of HUD-owned properties, manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans, and rehabilitation loan debtors who are delinquent or in default on their loans.

Period of the match

Matching will begin at least 30 days from the date copies of the signed (by both Data Integrity Boards) computer matching agreement are sent to both Houses of Congress or at least 30 days from the date this Notice is published in the Federal Register, whichever is later, providing no comments are received which would result in a contrary determination.

Issued at Washington, DC, September 7, 1990.

Michael F. Hill,

Acting Assistant Secretary for Administration.

[FR Doc. 90-21406 Filed 9-12-90; 8:45 am]

BILLING CODE 4210-32-M

Office of Administration

[Docket No. N-90-3145]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below the been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 30, 1990.

John T. Murphy,

Director, Information Policy and Management Divison.

Proposal: Recordkeeping Requirements Applicable to HUD Program Subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) and Implementation Rules at 49 CFR Part 24.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: The Department is required to maintain adequate records that demonstrate its compliance with the Uniform Relocation Assistance (URA). This recordkeeping will report the change in the information collection annual burden resulting from the 1987 revisions to the URA and the Department of Transportation Governmentwide rule published at 49 CFR part 24, effective for Department programs as of April 2, 1989.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping	1,500		1		26.67		40,000

Total Estimated Burden Hours: 40,000.

Status: Reinstatement.

Contact: Harold J. Huecker, HUD, (202) 708-0336; Scott Jacobs, OMB, (202) 395-6880.

Dated: August 30, 1990.

[FR Doc. 90-21402 Filed 9-11-90; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-90-3146]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OBM) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be

sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as require by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)

Dated: August 31, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Criteria for Acceptability of Insured 10-Year Protection Plan, FR–2036.
Office: Housing.
Description of the Need for the Information and its Proposed Use: This information is needed for the Department to identify criteria for acceptance of insured housing performance warranties. It is used to protect HUD and homeowners with HUD-insured financing against major dwelling defects.
Form Number: None.
Respondents: Businesses or other for-profit.
Frequency of Submission: Recordkeeping and annually.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Criteria for Acceptability of Insured 10-year Protection Plans	10		1		26		260

Total Estimated Burden Hours: 260.
Status: Reinstatement.
Contact: Scott Jacobs, OMB (202) 395–6880; Kenneth L. Crandall, HUD, (202) 708–2720.

Dated: August 31, 1990.

Proposal: Single Family FHA Mortgage Insurance on Hawaiian Home Lands.
Office: Housing.
Description of the Need for the Information and its Proposed Use: Section 247 of the National Housing Act, Single Family Mortgage Insurance on Hawaiian Homelands, provides mortgage insurance for single family properties located on Hawaiian Home (HHL) for native Hawaiians. The State Department of HHL must agree to become a co-mortgagor guarantying to reimburse the Department of offering other security acceptable to the Department.
Form Number: None.
Respondents: Individuals or households, State or local Governments, businesses or other for-profit, and small businesses or organizations.
Frequency of Submission: On occasion and monthly.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Certificate	20		5		1/6		16.67
Lease	20		5		1/20		5
Notice of Delinquency	20		12		1/2		120
Notice of Default	3		1		2		6

Total Estimated Burden Hours: 147.67.
Status: Reinstatement.
Contact: Richard Harrington, HUD, (202) 708–2676; Scott Jacobs, OMB, (202) 395–6880.

Dated: August 31, 1990.

[FR Doc. 90–21403 Filed 9–11–90; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–90–3147]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proproals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050.This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as

required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 4, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Inspection Form, Section 8 Existing Housing Program.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Annual unit inspections are required to insure that housing units leased under Section 8 Existing Housing Program are and continue to be "decent, safe, and sanitary" as required by law. The Public Housing Agencies will use the forms when inspecting a dwelling unit and will maintain a file to certify compliance with Department Regulations.

Form Number: HUD–52580 and 52580A.

Respondents: State or Local Governments.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Reporting	2,000		600		.5		600,000

Total Estimated Burden Hours: 600,000.

Status: Extension.

Contact: Gwen Carter, HUD, (202) 708–0477; Scott Jacobs, MOB, (202) 395–6880.

Dated: September 4, 1990.

Proposal: Requirements for Single Family Mortgage Instruments.

Office: Housing.

Description of the Need for the Information and its Proposed Use: As the insurer for single family mortgages, HUD must ensure that the mortgage instruments have provisions that are compatible with the Department's requirements. In addition, these instruments must contain the specific provisions necessary to accomplish program objectives.

Form Number: None.

Respondents: Individuals or households, businesses or other for-profit, and small businesses or organizations.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Mortgage Instruments	8,300		90		.25		186,750

Total Estimated Burden Hours: 186,750.

Status: Extension.

Contact: Richard Harrington, HUD, (202) 708–2676; Scott Jacobs, OMB, (202) 395–6880.

Dated: September 4, 1990.

[FR Doc. 90–21404 Filed 9–11–90; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–90–3148]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 6, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Requisition for Development and Modernization Funds.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: The 1937 Housing Act, as amended, authorizes the Department to assist Public Housing Agencies (PHAs) and Indian Housing Agencies (IHAs) in developing and rehabilitating lower income housing. The Form HUD–5402A is submitted by PHA/IHA to obtain financial assistance.

Form Number: HUD–5402A.

Respondents: State or Local Governments.

Frequency of Submission: Other.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–5402A	2,300		25		.5		28,750

Total Estimated Burden Hours: 28,750.

Status: Reinstatement.

Contact: Stephanie Avery-Boyd, HUD, (202) 708–0920; Scott Jacobs, OMB, (202) 395–6880.

Dated: September 6, 1990.

Proposal: Section 312 Rehabilitation Loan Program.

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: The Section 312 Rehabilitation Loan Program, created by Public Law 88–560, makes loans to property owners, both single-family and investor, for rehabilitation of their property. Loans are made in targeted areas in need of rehabilitation to correct code violations and incipient deficiencies, as part of an overall community development strategy.

Form Number: HUD–6230, 6230C, 6243, 6237, 40023, 40024, 40025, 40026, 40027, etc.

Respondents: Individuals or households, State or Local Governments, Federal Agencies or Employees, and non-profit institutions.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Forms	280		188.4		.473		24,984
Annual Recordkeeping	280		1		15		4,200

Total Estimated Burden Hours: 29,184.

Status: Reinstatement.

Contact: Richard Burk, HUD, (202) 708–1367; Scott Jacobs, OMB, (202) 395–6880.

Dated: September 6, 1990.

[FR Doc. 90–21405 Filed 9–11–90; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[AA–650–00–4120–10]

Regional Coal Teams, Reestablishment

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (5 U.S.C. appendix (1982)). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior (Secretary) is reestablishing the Regional Coal Teams (RCTs) for the Fort Union, Green River-Hams Fork, Powder River, and San Juan River coal production regions. The RCTs are independent subcommittees of the Federal-State Coal Advisory Board whose charter was renewed by the Secretary on September 28, 1988. As such, each RCT will, in developing its recommendations and advice for the Secretary, guide all phases of the coal activity planning process in its region and will provide advice to the Secretary, through the Director, Bureau of Land Management, on regional coal leasing levels, and on regional coal lease sale schedules and the tracts to be offered.

Further information may be obtained from Stan McKee, (202) 208–4636, Bureau of Land Management (650), U.S. Department of the Interior, 18th and C Streets NW., Washington, DC 20240.

The certification of reestablishment is published below.

Certification

I hereby certify that the reestablishment of the Fort Union, Green River-Hams Fork, Powder River, and San Juan River Regional Coal Teams are necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by those statutory authorities listed in 43 CFR 3400.0–3 and by Department policy for Federal-State cooperation concerning the Federal coal management program.

Dated: June 6, 1990.

Manuel Lujan, Jr.,

Secretary of the Interior.

[FR Doc. 90–21445 Filed 9–11–90; 8:45 am]

BILLING CODE 4310–84–M

Bureau of Land Management

[NM–010–4212–20/GPO–0116; NM NM 77237]

Issuance of Disclaimer of Interest to Land; Albuquerque District, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment.

SUMMARY: The following additions are made to the original notice published on Monday, March 19, 1990, in Vol. 55, No. 53, Page 10119, of the Federal Register.

In the second line after NM NM 77237, add NM NM 81410.

In the seventh line of the Summary after Holly Haas Baca, add as owner of Small Holding Claim 560, Tract 3 and Harvey Frauenglass and Gayle Frauenglass, as owners of Small Holding Claim 968, Tract 1.

For a period of 90 days from the date of publication of this amended notice, all persons who wish to submit

comments may do so in writing to the District Manager, Bureau of Land Management, 435 Montano Rd., NE., Albuquerque, New Mexico 87107. The disclaimer will be issued following the expiration of the 90-day period, if no protests are received.

Dated: August 31, 1990.

Larry L. Woodward,

State Director.

[FR Doc. 90–21299 Filed 9–11–90; 8:45 am]

BILLING CODE 4310–FB–M

National Park Service

Intent To Prepare a Revised Draft Environmental Statement and Wilderness Proposal and Reinitiation of Scoping Process; Voyageurs National Park, Minnesota

Under provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), notice is hereby given that the National Park Service, in compliance with the Voyageurs Act, as amended (16 U.S.C. 160 *et seq.*); and the Wilderness Act, as amended (16 U.S.C. 1131 *et seq.*), will prepare a revised draft environmental statement wilderness proposal for Voyageurs National Park. Public Law 91–661 (16 U.S.C. *et seq.*) requires that all areas within the Park be evaluated for wilderness suitability or unsuitability. The evaluation will be conducted in accordance with NEPA and the Wilderness Act.

The revised draft will be similar in scope to DES 80–49, dated July 1980, which was released in August 1980 for public and agency review (**Federal Register** August 1, 1980; Vol. 45 No. 150, pg. 51289). Alternative wilderness recommendations to be analyzed will be similar to those evaluated in that document and will range from no wilderness to all qualifying lands and waters. Motorized uses, including the provision of overland, non-wilderness snowmobile trail corridors will again be included in most alternatives. The impact analysis will concentrate on areas of potentially significant impact identified during the preparation of DES 80–49 and its public agency review. These include impacts on vegetation/soils/water quality, fisheries, the threatened gray wolf and bald eagle populations, cultural resources, and the local economy and visitors. The revised draft will also include a comment/response section so reviewers of DES 80–49 can see how their comments have been taken into consideration. A new comment/response section will be included in the Final Environmental Statement to address public and agency review comments on the revised draft.

Written suggestions and comments on the proposed scope of the revised draft as well as any other issues applicable to the development of the proposal referred to in the first paragraph above should be sent by November 2, 1990, to the Superintendent, Voyageurs National park, P.O. Box 50, International Falls, Minnesota 56649.

Dated: August 29, 1990.

William W. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 90–21309 Filed 9–11–90; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places, Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 1, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by September 27, 1990.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Talladega County

Jemison House Complex, S of jct. of Chocolocco and Cheaha Creeks, Eastaboga vicinity, 90001507

CALIFORNIA

Orange County

Casa de Esperanza, 31806 El Camino Real, San Juan Capistrano, 90001484

COLORADO

Douglas County

Pike's Peak Grange No. 163, 3093 N. State Hwy. 83, Franktown vicinity, 90001502

Teller County

Florissant School, 2009 Co. Rd. 31, Florissant, 90001503

INDIANA

Perry County

Nester House, 300 Water St., Troy, 90001486

KENTUCKY

Jefferson County

Kennedy-Hunsinger Farm (Boundary Increase) (Louisville and Jefferson County MPS), 4334 Taylorsville Rd., Louisville vicinity, 90001481

Three Mile Tollhouse, 2311 Frankfort Ave., Louisville, 90001489

Union County

Proctor, George N., House, KY 1180, E of jct. with Proctor Rd., Waverly vicinity, 90001488

NEW JERSEY

Camden County

Whitman, George, House, 431 Stevens St., Camden, 90001482

Hunterdon County

Pittstown Historic District, Pittstown Rd. and adjacent portions of Race St. and Quakertown Rds., Franklin and Alexandra Townships, Pittstown, 90001483

OHIO

Butler County

Morgan-Hueston House, Ross Rd. between Mack Rd. and Woodridge Blvd., Fairfield, 90001495

Cuyahoga County

Venice Building, 8401–8417 Euclid Ave., Cleveland, 90001496

Defiance County

Holgate Avenue Historic District, 328–716 Holgate Ave., Defiance, 90001497

Franklin County

Roger, John, Farmhouse (Canal Winchester MPS), 8020 Groveport Rd., Canal Winchester, 90001498

Seneca County

National Orphans' Home, Junior Order United American Mechanics, 600 N. River Rd., Tiffin, 90001499

Trumbull County

Garlick, Richard, Residence, 1025 Ravine Dr., Youngstown vicinity, 90001500

Williams County

Fountain City Historic District, Roughly bounded by Butler, Lynn, W. Wilson, Center, Portland and Beech Sts., Bryan, 90001501

SOUTH CAROLINA

Charleston County

Lighthouse Point Shell Ring (38CH12) (Late Archaic—Early Woodland Period Shell Rings of South Carolina MPS) Address Restricted, Charleston vicinity, 90001505

Newberry County

Hatton House, Holloway St. between Folk St. and US 176, Pomaria, 90001504

Union County

Buffalo Mill Historic District (Textile Mills in SC Designed by W.B. Smith Whaley MPS), Village of Buffalo and immediate surroundings, Buffalo 90001506

TEXAS

Cameron County

Fernandez, Miguel, Hide Yard, 1101–1121 E. Adams St., Brownsville, 90001485

VERMONT

Franklin County

Missisquoi River Bridge (Metal Truss, Masonry, and Concrete Bridges in Vermont MPS), VT 105–A over the Missisquoi R., Richford, 90001494

Rutland County

Colburn Bridge (Metal Truss, Masonry, and Concrete Bridges in Vermont MPS), US 7 over Sugar Hollow Brook, Pittsford, 90001493

Windsor County

Gilead Brook Bridge (Metal Truss, Masonry, and Concrete Bridges in Vermont MPS), VT 12 over Gilead Brook, Bethel, 90001492

Ottauquechee River Bridge (Metal Truss, Masonry, and Concrete Bridges in Vermont MPS), US 5 over the Ottauquechee R., Hartland, 90001491

Quechee Gorge Bridge (Metal Truss, Masonry, and Concrete Bridges in Vermont MPS), US 4 over Quechee Gorge, Hartford, 90001490.

[FR Doc. 90–21310 Filed 9–11–90; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–305]

Commission Determination Not To Review an Initial Determination Terminating Investigation on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

In the matter of: Certain Aramid Fiber Honeycomb, unexpanded block or slice precursors of such Aramid Fiber Honeycomb, and carved or contoured blocks or bonded assemblies of such Aramid Fiber Honeycomb.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) in the above-captioned investigation terminating the investigation on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Katherine M. Jones, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1097.

SUPPLEMENTARY INFORMATION: On June 25, 1990, all of the private parties in the investigation filed a joint motion to terminate the investigation on the basis of a proposed consent order and a consent order agreement. On July 20, 1990, the presiding ALJ issued an ID (Order No. 41) terminating the investigation on the basis of the consent order and consent order agreement. No petitions for review, or agency or public comments were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53(h), 19 CFR 210.53(h).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: August 31, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–21397 Filed 9–11–90; 8:45 am]

BILLING CODE 7020–02–M

[Inv. Nos. TA–503(a)–21 and 332–295]

President's List of Articles Which May be Designated or Modified as Eligible Articles for Purposes of the U.S. Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: Correction of effective date.

SUMMARY: The effective date for this investigation is August 28, 1990.

Notice of this investigation was published in the **Federal Register** on September 6, 1990 (55 FR 36707).

By order of the Commission.

Issued: September 7, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–21396 Filed 9–11–90; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–469 (Preliminary)]

High-Information Content Flat Panel Displays and Subassemblies Thereof From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of high-information content (HIC) flat panel displays and subassemblies thereof that are alleged to be sold in the United States at less than fair value (LTFV). [2]

Background

On July 18, 1990, a petition was filed with the Commission and the Department of Commerce by Advanced Display Manufacturers of America (Washington, DC) and its individual member companies, Planar Systems, Inc., Plasmaco, Inc., OIS Optical Imaging Systems, Inc., The Cherry Corporation, Electro-Plasma, Photonics Technology, Inc., and Magnascreen Corporation, alleging that an industry in the United States is materially injured, is threatened with material injury, or is materially retarded from being established by reason of LTFV imports of HIC flat panel displays from Japan. Accordingly, effective July 18, 1990, the Commission instituted preliminary antidumping investigation No. 731–TA–469 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 24, 1990 (55 FR 30042). The conference was held in Washington, DC, on August 7, 1990, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] For purposes of this investigation "HIC flat panel displays" are large area, matrix addressed displays, no greater than 4 inches in depth, with a picture element ("pixel") count of 120,000 or greater, whether complete or incomplete, assembled or unassembled. Included are monochromatic, limited color, and full color displays. Displays may utilize, but are not limited to, the following technologies: Liquid crystal, plasma, and electroluminescence. HIC flat panel displays are used to display text, graphics, and video. Subassemblies of a display that are exclusively dedicated to or designed for use in HIC flat panel displays are also covered by this investigation.

The following merchandise is excluded: Segmented flat panel displays, matrix addressed flat panel displays with less than 120,000 pixels, and cathode ray tubes.

The appropriate Harmonized Tariff Schedule (HTS) subheadings under which the subject merchandise is classifiable cannot be specified because (1) Customs rulings are not available on such goods, and (2) numerous provisions appear potentially applicable.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 4, 1990. The views of the Commission are contained in USITC Publication 2311 (September 1990), entitled "High-Information Content Flat Panel Displays and Subassemblies Thereof from Japan: Determination of the Commission in Investigation No. 731–TA–469 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: September 7, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–21398 Filed 9–11–90; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–445 (Final)]

Industrial Nitrocellulose From Yugoslavia

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: August 27, 1990.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–252–1181), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION: Effective April 19, 1990, the Commission instituted the subject investigation and established a schedule for its conduct (55 FR 19367, May 9, 1990). The Commission held a public hearing in Washington, DC on May 29, 1990. Subsequent to the Commission's hearing, the Department of Commerce extended the date for its final less than fair value (LTFV) determination in the investigation from July 2, 1990, to September 6, 1990, and the Commission revised its schedule in the investigation to conform with Commerce's new schedule (55 FR 30284, July 25, 1990). Commerce subsequently made its final LTFV determination on August 27, 1990 (55 FR 34946). The applicable statute directs that the Commission make its final injury determination within 45 days after Commerce's final LTFV determination, or in this case by October 10, 1990.

Therefore, the Commission's new schedule for the investigation is as follows: The deadline for filing posthearing briefs is September 18, 1990. and the deadline for Parties to file additional written comments on business proprietary information is September 24, 1990.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR Part 207), and part 201, subparts A through E (19 CFR part 201).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 4, 1990.

[FR Doc. 90–21399 Filed 9–11–90; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Jose Bruno Armijo, M.D., Revocation of Registration

On December 1, 1989, the Deputy Assistant Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause to Jose Bruno Armijo, M.D., 1331 San Andreas Avenue NW., Albuquerque, New Mexico 87197, proposing to revoke his DEA Certificate of Registration, AA2840418, and to deny any pending applications for renewal of that registration as a practictioner under 21 U.S.C. 823(f). The statutory predicate for the Order to Show Cause was Dr. Armijo's lack of authorization to engage in the manufacturing, distribution, or dispensing of controlled substances in the State of New Mexico.

The Order to Show Cause was sent by registered mail to Dr. Armijo at his personal residence, which was also the address listed on his DEA Certificate of Registration. Dr. Armijo received notice of the registered mail on December 11 and 16, 1989. It was returned to the DEA on December 21, 1989, as unclaimed. On January 25, 1990, a DEA Special Agent attemptd to serve the Order to Show Cause at Dr. Armijo's residence, but he did not appear to be there. On January 26, 1990, a DEA Investigator was informed by the local postal representative that Dr. Armijo continued to receive and accept mail at his registered location. An attempt by DEA to serve the Order to Show Cause that same day was unsuccessful. On January 31, 1990, a DEA Investigator again attempted to serve the Order to Show Cause at Dr. Armijo's residence after he was seen there earlier that day. The attempt was fruitless. Similarly, a DEA Investigator's attempts to serve the Order to Show Cause on February 14 and 20, 1990, and a Special Agent's attempts to so serve Dr. Armijo on three separate occasions in March of 1990, were unsuccessful. During this time period, Dr. Armijo's employment status was, and remains, unknown. He vacated his office several months before the Order to Show Cause was initially sent to his residence via registered mail.

It is quite evident that Respondent has been resisting all attempts by DEA to serve him with the Order to Show Cause. Considerable effort has been made to serve the Order to Show Cause without success. Further attempts to notify Dr. Armijo of these proceedings and to offer him an opportunity to participate would be pointless. Consequently, the Administrator now enters his final order in this matter based upon the investigative file.

The Administrator finds that on August 11, 1988, the Board of Medical Examiners of the State of New Mexico (Board) suspended Respondent's state license based on his inability to practice medicine with reasonable skill and safety due to excessive use or abuse of alcohol or drugs. The Board relied, in part, on a prescription survey conducted by the New Mexico Board of Pharmacy which indicated that Dr. Armijo was over-prescribing Dilaudid, a Schedule II narcotic controlled substance. The Board scheduled an examinatioan and hearing to discuss the results of the survey with him and to determine whether the habitual use or abuse of drugs or alcohol was affecting his ability to practice medicine. Dr. Armijo failed to appear, claiming that he was out of state the day of the hearing. It was subsequently determined, however, that he wrote prescriptions for controlled substances on the very day the hearing had been scheduled. The Board then suspended his state license.

On September 21, 1988, a DEA Investigator and a State Inspector visited Dr. Armijo at his residence, and asked him to voluntary surrender his DEA Certificate of Registration and his state controlled substances registration based upon the action of the Board. Dr. Armijo refused. By letter dated October 4, 1988, and sent by certified mail, the DEA again asked Dr. Armijo to voluntarily surrender his registration. The DEA never received the return

receipt. A second letter dated January 6, 1989, and sent via certified mail, was returned to DEA as unclaimed. On March 3, 1989, a DEA Investigator and a State Inspector returned to Dr. Armijo's residence and, after knocking on the front door several times, placed a copy of the January 6, 1989 letter with a voluntary surrender form in an envelope addressed to Dr. Armijo in the locked outer door of the residence. No response has ever been recieved.

On June 30, 1989, the Board of Medical Examiners of New Mexico revoked Respondent's state license based on a finding that Dr. Armijo prescribed controlled substances on 107 separate occasions to individuals for no legitimate medical purpose. Since Dr. Armijo failed to request a hearing on the matter and did not rebut the alligations against him, the Board's decision is final and is not subject to judicial review.

The Board's action has terminated Dr. Armijo's authority to possess, prescribe, administer, dispense or otherwise handle controlled substances in the State of New Mexico. DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant lacks state authority to manufacture, distribute dispense or otherwise handle controlled substances. *See* 21. U.S.C. 823(f). *See also Howard J. Reuben, M.D.*, 52 FR 8375 (1987); *Ramon Pla, M.D.*, 51 FR 41168 (1986); *Dale D. Shahon, D.D.S.*, 51 FR 23481 (1986); and cases cited therein. The Administrator therefore concluded that Dr. Armijo's Certificate of Registration should be revoked due to his lack of authority to handle controlled substances in the State of New Mexico.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AA2840418, previously issued to Jose Bruno Armijo, M.D., be, and it is hereby, revoked. It is further ordered that any pending applications for renewal of that registration be, and they are hereby, denied.

This order is effective September 12, 1990.

Dated: August 31, 1990.

Robert G. Bonner,

Administrator.

[FR Doc. 90-21305 Filed 9-11-90; 8:45 am]

BILLING CODE 4410-09-M

Pompeyo Q. Braga Bonado, M.D., Denial of Application

On May 7, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Pompeyo Q. Braga Bonado, M.D. (Respondent) proposing to deny his application, executed on November 22, 1988, for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest.

Respondent,through counsel, waived his opportunity for a hearing and instead, filed a written statement on the issues raised by the Order to Show Cause pursuant to 21 CFR 1301.54(c). The Administrator has considered the investigative file, as well as Respondent's written statement, and hereby enters his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

In March 1987, the New Jersey Department of Law and Public Safety, Division of Consumer Affairs, Board of Medical Examiners (hereinafter referred to as Board) received information that Respondent was indiscriminately prescribing large quantities of Schedule II controlled substances for suspicious individuals. As a result, the Board's Drug Diversion Section initiated an undercover investigation.

On April 10, 1987, a Board investigator went to Respondent's office in an undercover capacity. Respondent took a medical history from the investigator and performed a cursory physical examination. The investigator requested that Respondent provide her with a prescription for Doriden, a Schedule III controlled substance, expressly advising Respondent that she did not have trouble sleeping, but rather wanted the Doriden because it made her feel good. Respondent advised the investigator that he needed a medical reason for prescribing the medication. The investigator then observed Respondent writing on her medical record "difficulty sleeping." Respondent issued the investigator a prescription for 30 Doriden tablets. The investigator paid Respondent $35.00.

On April 16, 1987, the undercover investigator returned to Respondent's office. On this occasion, Respondent took the investigator's blood pressure, but performed no other physical examination. The investigator requested that Respondent provide her with a prescription for Dilaudid, a Schedule II controlled substance. Although Respondent declined to prescribe Dilaudid, he issued the investigator a prescription for 30 tablets of Doriden. Respondent then asked the investigator if she wanted anything else. Upon her request, Respondent issued the investigator a prescription for 15 tablets of Tylenol with codeine #3. The investigator paid Respondent $30.00. The combination of Doriden and Tylenol with codeine is popular with street abusers as a heroin substitute.

On June 4, 1987, the investigator returned to Respondent's office. Although Respondent declined to prescribe the investigator Doriden, codeine, Dilaudid or Tylox, he did issue the investigator a prescription for 30 tablets of Percodan, a Schedule II narcotic controlled substance. Respondent stated that he needed to justify the prescription by indicating in her medical record that she was in pain, knowing that the investigator had not presented symtoms of pain. Respondent refused to provide the investigator with a prescription for Doriden in her "husband's" name, advising the investigator to see another physician and alternate between the two in order to obtain more prescriptions. Respondent did not conduct any sort of physical examination on this occasion, nor did he discuss any medical problems with the investigator. The investigator paid Respondent $30.00.

The investigator returned to Respondent's office on June 22, 1987. Respondent refused to prescribe Dilaudid or codeine base products, however, he issued the investigator a prescription for Doriden. Respondent did not perform any sort of physical examination nor did he ask any medial questions. The investigator paid Respondent $30.00.

A different Board investigator went to Respondent's office in an undercover capacity on April 10, 1987. Respondent took a medical history from the investigator. The investigator requested that Respondent provide her with a prescription for Percocet, advising him that although she did not know why she started taking it more than one year before, she needed it. The investigator advised Respondent that she was not in pain. Respondent stated that he needed a reason to give the investigator the Percocet. Notwithstanding the investigator's statement that she was not in pain, Respondent stated that he would diagnose her problem as migraines. Respondent then performed a cursory physical examination and gave her a prescription for 30 tablets of Darvocet-N. The investigator paid Respondent $35.00.

On April 25, 1987, the second investigator returned to Respondent's office. After advising Respondent that the Darvocet-N which he had previously prescribed was "no good," the investigator asked for a prescription for Percocet. Respondent advised the investigator that she would have to undergo a test to "cover" themselves, so they would not "go to jail" if she wanted him to "keep giving (her) Percocet." Nonetheless, Respondent issued the investigator a prescription for 30 tablets of Percocet on this occasion. Although Respondent took the investigator's blood pressure, he did not perform any other physical examination. The investigator paid Respondent $30.00.

The Administrator concludes that none of the prescriptions issued for the two Board investigators were issued for a legitmate medical purpose nor in the course of professional practice.

During the course of the investigation, Board investigators learned of an individual who was seen by Respondent at his office between November 1986 and May 1987. When the individual first visited Respondent, he complained of back pain. Respondent took his temperature and blood pressure, but performed no additional physical examination. Respondent then issued the individual a prescription for 30 tablets of Percocet. The individual returned to Respondent's office a month later and received another prescription for Percocet, "with no question asked with regards to my health." Thereafter, he returned to Respondent's office two to three times each week. On each visit Respondent gave the individual a prescription for 30 tablets of Percocet without performing any sort of physical examination. After several months, the individual was consuming 15 to 20 tablets of Percocet per day. He became addicted to Percocet and on or about May 1987, was admitted to a local hospital following a suicide attempt.

On July 10, 1987, the New Jersey Department of Law and Public Safety, Division of Consumer Affairs filed an administrative complaint charging Respondent with prescribing without medical justification, gross malpractice, and endangering the health or life of one or more persons in violation of the laws of the State of New Jersey. On July 16, 1987, Respondent was summarily suspended from the practice of medicine by the New Jersey State Board of Medical Examiners. This suspension continued until October 12, 1988, when Respondent was given limited authority to resume the practice of medicine. On April 1, 1988, Respondent surrendered his prior DEA Certificate of Registration.

On June 8, 1988, Respondent was indicted in the Superior Court of New Jersey, Monmouth County and charged with eight counts of unlawfully distributing a controlled dangerous substance and one count of knowingly maintaining premises resorted to by persons using controlled dangerous substances. On July 13, 1988, Respondent pled guilty to these charges and on August 12, 1988, was sentenced to three years probation, fined $8,400.00, and ordered to perform 200 hours of community service. In addition, Respondent's driver's license was revoked for one year.

In his written statement, Respondent argues that his convictions did not involve the sale or distribution of "hard drugs", such as cocaine, heroin or marijuana, and as a result, Respondent should not be classified with the common drug dealer and should be given the deference his position and profession requires. Respondent's contention is unworthy of serious consideration. The diversion of licit controlled substances into the illicit market is as much a problem in today's society as the distribution of illicit drugs. As a health care professional and DEA registrant, Respondent bears a heavy responsibility to ensure that the controlled substances he prescribes are not abused.

Respondent next argues that because the amount he charged "patients" was far below that charged by other practitioners in similar communities with equal medical expertise, one could not say that his motive for writing illegal prescriptions was money. Respondent's motivation is of no great consequence. The evidence in this case shows that Respondent knowingly and intentionally issued controlled substance prescriptions for no legitimate medical purpose. He falsified his medical records to justify such prescribing. His motivation for doing so is of little consequence.

Respondent contends that the amount of controlled substances he prescribed was far below what is normally prescribed by doctors in similar situations. The relevant issue here is not how much was prescribed, but whether the drug was prescribed for a legitimate medical need. As evidenced by the visits of the undercover Board investigators, Respondent issued controlled substance prescriptions outside the scope of professional practice and for no legitimate medical purpose.

Respondent attempts to explain his prescribing of Percocet to the individual that ultimately attempted suicide. Respondent states that the individual was a drug addict long before obtaining any drugs from Respondent and that this fact was well-known throughout the community. This explanation, however, further calls into question Respondent's ability to handle controlled substances responsibly. If, indeed, the individual was a known addict, then why did Respondent prescribe Percocet, a highly abused Schedule II narcotic.

The Administrator may deny an application for a DEA Certificate of Registration if he determines that the registration would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(f), "(i)n determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. See, *Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 Fed. Reg. 16422 (1989); *Neveille H. Williams, D.D.S.*, Docket No. 87–47, 53 Fed. Reg. 23465 (1988); *David E. Trawick, D.D.S.*, Docket No. 86–69, 53 Fed. Reg. 5326 (1988).

In this case, the first through fourth factors apply. Respondent engaged in egregious misconduct which was an abuse of both his professional responsibilities as a physician and his responsibilities as a DEA registrant. This conduct led to his criminal convictions, and loss of his medical license for a period of time. Respondent's prescribing of controlled substances for no legitimate medical purpose illustrates his disregard for the tremendous responsibility which accompanies DEA registration. Respondent's registration is clearly contrary to the public interest.

The Administrator is not convinced that Respondent accepts the seriousness of his misdeeds and consequently, is not convinced that such misdeeds will not occur again in the future. Accordingly, the Administrator of the Drug

Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby ordered that the application for registration, executed on November 22, 1988, by Pompeyo, Q. Braga Bonado, M.D., be, and it hs hereby is, denied.

Dated: August 31, 1990.

Robert C. Bonner,

Administrator.

[FR Doc. 21307 Filed 9–11–90; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89–3]

Lakshmi K. Kenue, M.D., Revocation of Registration

On December 16, 1988, the Deputy Assistant Admininstrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Lakshmi K. Kenue, M.D. (Respondent), 30542 Southfield Road, Suite 230, Southfield, Michigan 48076. The Order to Show Cause proposed to revoke Respondent's DEA Certificate of Registration, BK0803379. The statutory basis cited in the Order to Show Cause was that Respondent's continued registration was inconsistent with the public interest as set forth in 21 U.S.C. 823(f) and 21 U.S.C. (a)(4). Specifically, the Order to Show Cause alleged that Respondent's registration was inconsistent with the public interest based on Respondent's participation in a conspiracy to unlawfully dispense controlled substances and defraud Medicaid by permitting unlicensed individuals to complete pre-signed prescriptions for controlled substances for individuals she never saw as patients.

By letter dated January 17, 1989, counsel for Respondent requested a hearing on the issues raised in the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was set to be held in Washington, DC on June 27 and 28, 1989. Upon request by both parties, however, the hearing was indefinitely continued. The parties entered into a Memorandum of Agreement in which they agreed that Respondent's DEA registration would remain suspended until the Michigan State Board of Medicine (Board) decided whether or not to reinstate Respondent's medical license. The Board had earlier temporarily suspended Respondent's license based upon her conviction of two counts of attempted Medicaid fraud. Respondent later applied for reinstatement of her license by the Board. By the terms of the Memorandum of Agreement, Respondent agreed to the revocation of her DEA Certificate of Registration, without a hearing, should the Board refuse to reinstrate her medical license.

On February 13, 1990, a state administrative law judge issued an opinion recommending that the Board find that Respondent failed to meet the requirements for reinstatement of her medical license. By final order dated April 6, 1990, the Board adopted the administrative law judge's opinion and denied reinstatement of Respondent's medical license. Upon motion by the Government and in accordance with the Memorandum of Agreement, the administrative law judge presiding over the DEA proceedings terminated the case before him by order dated May 18, 1990.

In view of the Memorandum of Agreement entered into by the parties, the Administrator has deemed Respondent to have waived her opportunity for a hearing, and hereby issues his final order pursuant to 21 CFR 1301.57 without a hearing and based upon the investigative file and the administrative record as it now appears. *See* 21 CFR 1301.54(c) and 1301.54(e).

The Administrator finds that based upon the actions of a competent state authority denying reinstatement of Respondent's medical license, Respondent is no longer authorized by state law to engage in the manufacturing, distribution, or dispensing of controlled substances. Without a state license, Respondent cannot maintain a DEA registration. 21 U.S.C. 824(a)(3). Further, in view of the Memorandum of Agreement entered into by the parties, the Administrator has deemed Respondent not only to have waived her opportunity for a hearing, but also to have consented to the revocation of her registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him under the provisions of 21 U.S.C. 824(a)(3) and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, BK0803379, previously issued to Lakshmi K. Kenue, M.D., be and it is hereby, revoked. It is further ordered that any pending applications for renewal of that registration be, and they are hereby, denied.

This order is effective September 12, 1990.

Dated: August 31, 1990.

Robert C. Bonner,

Administrator.

[FR Doc. 90–21306 Filed 9–11–90; 8:45 am]

BILLING CODE 4410-09-M

Floyd A. Santner, M.D.; Denial of Applications

On March 30, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to FLoyd A. Santner, M.D., St. Francis Hospital, 25 West Hayden Street, Marceline, Missouri 64658. The Order to Show Cause proposed to deny his applications, executed on April 12, 1986 and January 19, 1987, for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that the registration of Dr. Santner would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

The Order to Show Cause was received by Dr. Santner on April 4, 1988. By letter dated May 3, 1988, Dr. Santner requested that DEA amend his applications for registration. However, Dr. Santner did not indicate whether he wanted to proceed with a hearing. By registered mail, Dr. Santner was sent a letter which again explained the procedures available to him pursuant to the Order to Show Cause. The registered mail receipt indicates that it was received on July 18, 1988. More than thirty days have passed since the letter was received by Dr. Santner and the Drug Enforcement Administration has received no response thereto. Therefore, the Administrator concludes that Dr. Santner has waived his opportunity for a hearing on the issues raised in the Order to Show Cause, and pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters this final order based upon information contained in the investigative file 21 CFR 1301.57.

The Administrator finds that in 1977, the Pennsylvania State Police Department received numerous complaints from individuals who lived in the vicinity of Dr. Santner's office. The complainants stated that there was an inordinate number of people in their teens who left Dr. Santner's office stumbling and others who congregated on the street or on the lawns and sidewalks in the area. As a result of this information, state police officers conducted surveillance at Dr. Santner's office and saw many individuals, who in their opinion and experience, appeared to be under the influence of some type of substance.

The police surveillance further revealed that approximately ninety-five percent of the people that left Dr. Santner's office proceeded immediately to a nearby pharmacy. The officers interviewed the pharmacists at the pharmacy and examined the pharmacy

records for the period between February 1, 1978 and February 24, 1978. The records revealed that Dr. Santner had prescribed excessive quantities of Schedule II controlled substances, including 15,901 dosage units of Quaalude, 3,129 dosage units of Ritalin and 903 dosage units of Percodan.

Additionally, a subsequent prescription audit conducted by DEA revealed that during July and August 1979, the pharmacy filled over 1,900 of Dr. Santner's prescriptions for Quaalude, 300 mg. During the period from January 1, 1979 through October 24, 1979, this pharmacy purchased over 179,000 dosage units of Quaalude, 300 mg., most of which was used to fill Dr. Santner's prescriptions.

The extensive investigative file further reveals that on February 28, 1979, based on complaints, surveillance and a pharmacy survey, Upper Darby Police Officers executed a search warrant at Dr. Santner's office and seized patient records, financial ledgers and billing information. The documents seized during this search further substantiated the fact that Dr. Santner prescribed large quantities of controlled substances to patients on a continuous basis for no apparent medical condition. Seized appointment books showed that during the period between 1977 and 1978, Dr. Santner was seeing four to eight patients in each 15 minute block of time.

As a result of the investigation, Dr. Santner was arrested on February 28, 1979. A jury trial conducted in Delaware County, Pennsylvania, from September 7, 1979 to October 5, 1979, returned guilty verdicts on two counts of violating state controlled substance laws. On October 14, 1980, Dr. Santner was sentenced to six months in prison and a $5,000 fine for unlawful dispensing of controlled substances to a drug dependent person. Dr. Santner was also sentenced to two to four years imprisonment and a fine of $15,000 for unlawful dispensing of controlled substances by a practitioner.

Shortly after Dr. Santner's conviction, DEA investigators learned that he had moved his medical office to a room in a Holiday Inn in Philadelphia, Pennsylvania. He rented the room under a fictitious name and did not inform the management that he would be operating a medical office from the hotel room. The investigative file reveals that Dr. Santner continued to practice and write prescriptions in the same manner and quantity that he had done prior to his arrest. As a result, DEA served Dr. Santner with an Order to Show Cause and an Immediate Suspension Order on October 19, 1979. Following the completion of prehearing procedures, the administrative law judge established a date and place for a hearing. However, prior to commencement of the hearing, Dr. Santner and the Government filed a joint motion to stay the proceedings pending the outcome of post-trial motions and appellate proceedings arising out of the underlying criminal case.

On April 11, 1982, DEA received certification from the Pennsylvania Board of Medical Education and Licensure that Dr. Santner's license to practice medicine in Pennsylvania had been revoked. Due to this Board action, the Administrator revoked Dr. Santner's DEA registration. See *Floyd A. Santner, M.D.*, Docket No. 79–23, 47 Fed. Reg. 51831 (1982).

The Administrator finds that Dr. Santner's criminal conviction was overturned on July 9, 1982, due to a procedural error. Despite this reversal, the Administrator finds that the facts which underlie Dr. Santner's arrest demonstrate that he was a pernicious prescriber and cannot be trusted to handle controlled substances. The results of the prescription surveys revealed that Dr. Santner excessively and inappropriately prescribed controlled substances to a number of patients over extended periods of time. Additionally, testimony presented at the criminal trial revealed that Dr. Santner knew, or should have known, that a significant number of his patients to whom he issued prescriptions for controlled substances, were drug dependent. Dr. Santner's receptionist testified that she noticed that a lot of the patients that came into the office were very glassy-eyed, tired-looking, falling all over the place, bumping into things, and spoke with slurred voices. A pharmacist testified that he turned some of Dr. Santner's patients away and refused to fill their prescriptions when they "stumbled around a little bit and just acted a little bit unusual." Additionally, a patient for whom Dr. Santner prescribed controlled substances, including Quaalude and Valium, told Dr. Santner she was on a methadone program.

The Administrator further finds that medical experts reviewed Dr. Santner's patient records. One expert concluded that the quantities and frequencies of the controlled substances prescribed presented a grave threat to the health, well-being, and life of the individuals, while no cogent pharmacologic basis had been presented to justify their use for the patient complaints. Another expert concluded that Dr. Santner excessively prescribed controlled substances and that great mental and physical deterioration to the patients would result if they took the quantities prescribed. A third expert concluded that the quantity of Quaalude, Valium, Doriden and Talwin, prescribed by Dr. Santner were more than sufficient to produce both psychological and physical dependence in humans. This expert further concluded that in many cases, there was not sufficient time to allow for metabolism of the drugs by the patient from one visit to the next and if the patient actually consumed all of the medication prescribed between visits an overdose would have resulted. Another expert noted that Dr. Santner's patient records contained meager information and that there was an absence of variation on diagnoses and individualized treatment. In several cases, the treatment was obviously not in the patient's best interest, as demonstrated by inadequate follow-up, a lack of alteration in medication and an absence of adequate explanations for the treatment given.

A DEA registration authorizes a physician to prescribe or dispense controlled substances only within the usual course of his or her professional practice. For a prescription to have been issued within the course of a practitioner's professional practice, it must have been written for a legitimate medical purpose within the context of a valid physician-patient relationship. Legally, there is absolutely no difference between the sale of a illicit drug on the street and the illicit dispensing of a licit drug by means of a physician's prescription. In the instant case, Dr. Santner's prescribing practices were deplorable and clearly outside the scope of legitimate medical practice. Dr. Santner has shown a total disregard for the health and welfare of his patients, demonstrated a lack of appreciation for the inherently dangerous nature of the drugs he prescribed and has abandoned the responsibilities placed upon him by possession of a DEA registration. Dr. Santner's past conduct constitutes a flagrant abuse of authority and leads the Administrator to conclude that Dr. Santner's registration would be inconsistent with the public interest. 21 U.S.C. 823(f).

Additionally, the Administrator finds a second statutory basis for denial of Dr. Santner's applications. Dr. Santner materially falsified two applications for registration under the Controlled Substances Act, a statutorily sufficient basis for denial of a DEA registration. 21 U.S.C. 824(a)(1).

The Administrator finds that Dr. Santner falsified his application executed on April 12, 1986, by indicating that he was authorized to handle

controlled substances in the Commonwealth of Pennsylvania. Dr. Santner's Pennsylvania license was revoked in 1982, and although that license was reinstated on March 12, 1986, the reinstatement was subject to the condition that Dr. Santner not practice medicine and surgery within the borders of the Commonwealth of Pennsylvania. Dr. Santner also falsified his application executed on January 19, 1987, by indicating that he was authorized to handle Schedule II–V controlled substances in the State of Missouri. However, pursuant to his Missouri Controlled Substances Registration, Dr. Santner may prescribe only the following controlled substances: Tylenol No. 3, Tussi-organidin and Valium. A further condition placed on the Missouri registration was that Dr. Santner could not lawfully write prescriptions for controlled substances until he was issued and had received a DEA registration. The investigative file reveals that in violation of this condition, Dr. Santner had, on six occasions, written prescriptions for controlled substances and received them from the floor stock at the hospital where Dr. Santner is employed. Dr. Santner then dispensed them to in-house patients. These prescriptions written during the period of September 13, 1987 to March 19, 1988, were for Tylenol No. 3, Lomotil and Percodan. All prescriptions were written without proper authorization.

Dr. Santner has a long history of controlled substance violations. No evidence of explanation or mitigating circumstances has been offered on behalf of Dr. Santner. The Administrator cannot conceive of any explanation which would excuse Dr. Santner's criminal and unprofessional conduct. To protect the public interest and to prevent further diversion of controlled substances, the Administrator concludes that Dr. Santner's registration would be wholly inconsistent with the public interest. 21 U.S.C. 823(f). In addition, the Administrator finds that Dr. Santner materially falsified his applications for registration. 21 U.S.C. 824(a)(1).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that the applications for registration, executed by Dr. Santner on April 12, 1986 and January 19, 1987, be, and hereby are, denied. It is further ordered that any pending applications for registration submitted by Dr. Santner are also denied.

This order is effective September 12, 1990.

Dated: August 31, 1990.

Robert C. Bonner,

Administrator.

[FR Doc. 90–21038 Filed 9–11–90; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–24,606]

George Harris Oil Co.; Abilene, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 16, 1990 in response to a worker petition received on July 16, 1990 which was filed on behalf of workers at George Harris Oil Company, Abilene, Texas.

Petitioners were unable to provide any information regarding company officials who could be contacted for appropriate company data. Without company data, the Department cannot make a determination. Consequently, the investigation has been terminated.

Signed at Washington, DC, 30th day of August 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90–21373 Filed 9–11–90; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–24,348]

Pacific Brands Footwear Fenton, MO; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 25, 1990 applicable to all workers of Pacific Brands Footwear, Fenton, Missouri. The notice was published in the **Federal Register** on June 7, 1990 (55 FR 23310).

Based on new information from the company, a few additional workers are currently being retained beyond the May 24, 1990 termination date for close down operations. Therefore, the certification is amended by deleting the termination date. The amended notice applicable to TA–W–24,348 is hereby issued as follows:

All workers of Pacific Brands Footwear, Fenton, Missouri who became totally or partially separated from employment on or after April 18, 1989 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 31st day of August 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90–21372 Filed 9–11–90; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M–90–10–M]

Sunshine Mining Company; Petition for Modification of Application of Mandatory Safety Standard

Sunshine Mining Company, P.O. Box 1080, Kellogg, Idaho 83837 has filed a petition to modify the application of 30 CFR 57.11051(b) (escape routes) to its Sunshine Mine (I.D. No. 10–00089) located in Shoshone County, Idaho. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that escape routes be marked with conspicuous and easily read direction signs that clearly indicate the ways of escape.

2. The posting of emergency exit signs would encourage employees to make a decision on which way to go without the benefit of any information on the location of a fire. These employees would have the potential of exiting into the contaminated split of the ventilation system, thus resulting in a diminution of safety.

3. The escape plan calls for employees, upon smelling smoke or stench, to immediately go to the shaft station through which they entered the mine, where an assigned person will direct them to exit the mine through the appropriate route.

4. The active part of the mine is divided into two separate ventilation circuits. There are two major interior mine shafts, effectively isolated from each other, that carry intake ventilation air to the two distinct and separated active areas of the mine. Fresh air flows from the two shafts to all work areas in the separate systems.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health

Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 12, 1990. Copies of the petition are available for inspection at that address.

Dated: September 4, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-21369 Filed 9-11-90; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 90-60; Exemption Application No. D-7936 et al.]

Grant of Individual Exemptions; First National Bank of Anchorage Common Trust Fund, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

First National Bank of Anchorage, Common Trust Fund (the Fund), Located in Anchorage, Alaska

[Prohibited Transaction Exemption 90-60; Exemption Application No. D-7936]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1) (A) through (E) of the Code, shall not apply to past and prospective sales of defaulted real estate mortgages (the Mortgages) by the Fund in which certain employee benefit plans invest, to the First National Bank of Anchorage (the Bank), a party in interest with respect to the Fund, provided that—

A. With respect to past transactions:

(1) The sales were one-time cash transactions;

(2) The Fund incurred no costs in connection with the sales;

(3) The Fund sold each Mortgage at each Mortgage's outstanding principal balance plus accrued, but unpaid interest, and penalty charges at the time of the sale;

(4) An independent qualified appraiser determined that the purchase price of each Mortgage (described in A.(3) above) was equal to the upper limit of its fair market value at the time of the purchases;

(5) All defaulted Mortgages of the Fund were always purchased by the Bank, rather than segregated, according to a determination of the Board of Directors of the Bank;

(6) The sales were determined to be in the best interest of the Fund by the Board of Directors of the Bank following a declaration of default in accordance with the Comptroller of Currency regulations; and

(7) The borrowers of the Mortgages were independent third parties.

B. With regard to prospective transactions entered into after September 30, 1988:

(1) The sales will continue to be one-time cash transactions;

(2) The Fund will incur no costs in connection with the sales;

(3) The Fund will sell any future Mortgage at each Mortgage's outstanding principal balance plus accrued, but unpaid interest, and penalty charges at the time of the sale;

(4) An independent qualified appraiser will determine that the purchase price of each Mortgage (described in B.(3) above) will be equal to the upper limit of its fair market value at the time of the purchase;

(5) Independent Fiduciaries (the Independent Fiduciaries) appointed to act on behalf of the Fund in these transactions will review and determine that a Mortgage is in default, has been properly declared to be in default by the Bank in accordance with the Comptroller of Currency regulations, and that the prospective sale of a Mortgage is in the best interest of the Fund;

(6) Neither of the Independent Fiduciaries will derive more than 5% of his gross annual income from the Bank for each fiscal year that he serves in an independent fiduciary capacity with respect to the transactions described herein;

(7) The Mortgages will continue to be purchased, rather than segregated, by the Bank;

(8) The Bank maintains for a period of six years from the date this grant appears in the **Federal Register** the records necessary to enable persons described in subsection (9) of this Section B to determine whether the conditions of this proposed exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to the circumstances beyond the control of the Bank or its affiliates, the records are lost or destroyed prior to the end of the six-year period;

(9)(i) Except as provided in paragraph (ii) of this subsection (9) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in subsection (8) of this Section B are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in the Fund, who has authority to acquire or dispose of the

interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in the Fund, or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in the Fund, or any duly authorized employee or representative of such participant or beneficiary.

(ii) None of the persons described in subparagraphs (B) through (D) of this subsection (9) shall be authorized to examine trade secrets of the Bank, any of its affiliates, or commercial or financial information which is privileged or confidential; and

(10) The borrowers of the Mortgages will be unrelated third parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 16, 1990 at 55 FR 28962/28964.

EFFECTIVE DATE: This exemption will be effective as of August 5, 1980, and will remain effective for a five year period from the date this grant appears in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Imperial Palace, Inc. Restated, Profit Sharing Plan (the Plan), Located In Las Vegas, Nevada

[Prohibited Transaction Exemption 90–61; Exemption Application No. D–8183]

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the past sales of certain promissory notes and shares of stock by the Plan to Ralph Engelstad, a party in interest with respect to the Plan, provided the proceeds received by the Plan were at least the greater of the fair market value at the time of the sale or the Plan's cash outlay for the securities to the time of sale.

EFFECTIVE DATE: This exemption is effective as of November 30, 1988.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 5, 1990, at 55 FR 27718.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Donald J. Keune Profit Sharing Plan (the Plan), Located in Toledo, Ohio

[Prohibited Transaction Exemption 90–62; Application No. D–8287]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan of not more than $22,000 (the Loan) to Donald J. Keune (Mr. Keune) the owner and sole proprietor of the Plan sponsor, and to his wife, Mary L. Keune, by Mr. Keune's account in the Plan; provided that the terms and conditions of the Loan are no less favorable to Mr. Keune's account in the Plan than those obtainable in an arm's-length transaction with an unrelated third party at the time of the making of the Loan.[1]

FOR FURTHER INFORMATION CONTACT: Ms. Kay Madsen of the Department, telephone (202) 523–8881. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application describes all material terms of the transaction which is subject to the exemption.

Signed at Washington, DC, this 7th day of September 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90–21421 Filed 9–11–90; 8:45 am]

BILLING CODE 4510–29–M

[1] The applicant represents that Mr. Keune is the sole participant under the Plan. Hence, there is no jurisdiction under title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under title II of the Act pursuant to section 4975 of the Code.

[Application No. D–8305 et al.]

Proposed Exemptions; Kenosha Laborer's Local 237 Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state the reasons for the writer's interest in pending exemption.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Kenosha Laborer's Local 237 Pension Plan (the Pension Plan); Carpenter's Trust of Kenosha, WI (the Carpenter's Plan); and Kenosha Building & Construction Trades Welfare Fund (the Welfare Plan; Together, the Plans), Located in Kenosha, Wisconsin

[Application No. D–8305]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed acquisition by the Plans of limited partnership units in the Kenosha Civic Center II Associates (KCCA), a limited partnership which is a party in interest with respect to the Plans, provided the Plans pay no more than the fair market value of the interests on the date of the acquisition.

Summary of Facts and Representations

1. The Kenosha Laborers Local 237 is an employee organization whose members are covered by the three Plans. The Pension Plan is a defined benefit plan with benefits based partly on the balance of the separate account of the participant. The Pension Plan has 342 participants and assets of approximately $6,973,000. The Carpenter's Plan is a defined benefit plan with 651 participants and assets of approximately $4,915,000. The Welfare Plan has 435 participants and assets of approximately $1,867,000. All three Plans are maintained pursuant to collective bargaining agreements. The Pension Plan and the Carpenter's Plan each have six trustees on their Boards of Trustees. The Welfare Plan has eight trustees.

2. KCCA proposes to build, own and operate a housing development in Kenosha, Wisconsin. The housing development will be located on 5.8 acres of land located between 52nd and 54th Streets and 11th and 13th Avenues. The housing development will include 150 2-bedroom units, 49 of which will be 2- and 3-story townhouses and 101 of which will be apartments in 3-story buildings with elevators. The housing development will provide for 232 parking spaces, including 82 garages. Actual day-to-day marketing, management and maintenance operations will be provided by a professional real estate management company which is a general partner in the development. The development will employ a full-time, on-site manager and maintenance staff.

3. KCCA will consist of one general partner (the GP) owning 55.22% of KCCA, and up to 15 limited partners owning the remaining 44.78% of the partnership. The GP will be Kenosha Redevelopment Associates, a limited partnership. The limited partnership will consist of two general partners and one limited partner. One of the two general partners of the GP will be Camosy Development Corporation (CDC) of which Mr. R.E. Camosy (Mr. Camosy) owns more than 50% of the voting stock. CDC will own 5.41% of the GP, and therefore 2.985% of KCCA. The other general partner of the GP will be Bear Property Management, Inc. (Bear). Bear will own 5.41% of the GP, and therefore 2.985% of KCCA. The limited partner of the GP will be Camosy, Incorporated, a corporation of which Mr. Camosy owns greater than 50% of the voting stock. Camosy, Incorporated will own 89.18% of the GP, and therefore 49.25% of KCCA.

4. There will be 15 limited partnership units available in KCCA. Each unit will have a price of $40,000, and will represent ownership of 2.985% of the profits, losses, cash flow, tax credit and property appreciation in this housing development. The Pension Plan intends to purchase two units. The Carpenter's Plan and the Welfare Plan each intend to purchase one unit.

5. The Wisconsin Housing and Economic Development Administration will provide a first mortgage to KCCA in the amount of $4,743,200, with interest at the rate of 8¾% per annum for a 30 year period. The city of Kenosha, through its funds from the U.S. Department of Housing and Urban Development, will provide a second mortgage to KCCA in the amount of $2,000,000, with simple interest at the rate of 3% per annum starting in the fourth year. There will be no interest charged for the first three years. The city of Kenosha will also provide a grant, which is not to be repaid, in the amount of $1,834,000.

6. Camosy Construction Co., Inc. is a party in interest to the Plans because it is an employer whose employees are covered by the three Plans. Mr. Camosy owns greater than 50% of the voting stock of Camosy Construction Co., Inc. CDC and Camosy, Incorporated are parties in interest to the Plans as a result of Mr. Camosy's stock ownership of those corporations. Mr. Camosy's son, R.J. Camosy, who is President of Camosy Construction Co., Inc. and of Camosy, Incorporated, is one of the six trustees on the Board of Trustees of the Pension Plan. Neither Mr. Camosy nor any employee of any company owned by Mr. Camosy (other than R.J. Camosy) serves as a fiduciary with respect to any of the three Plans. The contract builder for KCCA will be Camosy, Incorporated. The property management and marketing for KCCA will be performed by Bear. The applicant has represented that KCCA constitutes a real estate operating company within the meaning of Regulation § 2510.3–101(e).[1] Accordingly, the applicant represents that the assets of the Plans will include the limited partnership units in KCCA, but will not include the underlying assets of KCCA.

7. The Johnson Heritage Trust Company of Kenosha, Wisconsin (JHTC), has been retained by the Plans to act as an independent fiduciary with

[1] In this proposed exemption, the Department expresses no opinion as to whether KCCA is a real estate operating company within the meaning of § 2510.3–101(e).

respect to the subject transaction. JHTC will be making the determination on behalf of the Plans as to whether to engage in the subject transaction.[2] JHTC is organized under the laws of the State of Wisconsin and is empowered to act as a trust company and fiduciary. It currently has assets under management for its various clients in excess of 487 million dollars. Of this amount, approximately 150 million dollars represents assets held in benefit plans subject to the Act. JHTC represents that it is independent of Mr. Camosy, R.J. Camosy and all businesses owned by Mr. Camosy and R.J. Camosy. Neither Mr. Camosy nor R.J. Camosy has any ownership of JHTC or serves as an employee, officer, director or trustee for JHTC. No businesses owned by either Mr. Camosy or R.J. Camosy have any ownership in JHTC or any business relationships with JHTC.

8. Mr. Robert Schneider, Senior Vice President and Trust Officer of JHTC, has represented that he has reviewed the proposed transaction and determined that it is appropriate for the Plans and in the best interests of their participants and beneficiaries. Mr Schneider represents that even if the project were not to increase in value, the Plans would be receiving an annual cash return which would justify investment in the project. Mr. Schneider further represents that the project appears to be well thought out, more than adequately financed, and is being developed and managed by a high-quality general partner whose reputation is of the highest professional caliber. In addition, Mr. Schneider states that given the very real possibility that there will be substantial appreciation in the project over the ensuing years, the potential return to the Plans would be more than adequate given the perceived risks. This reasoning is further enhanced by the fact that the investment in this project comprise a very small percentage of the total assets of each Plan, and that the Plans themselves are in need of investments which provide for some inflationary hedge. In evaluating the investment, Mr. Schneider represents that he considered the fact that a party in interest, Camosy, Incorporated, will be providing services to KCCA. Mr. Schneider represents that JHTC, as independent fiduciary for the Plans, will monitor and review the Plans' investments in KCCA and will take whatever steps are necessary to protect the interests of the Plans. JHTC has the authority to hold and retain the investments for each of the Plans, and in the event JHTC determines that it is no longer prudent to hold the investments, JHTC has the authority to sell each of the Plans' investments in KCCA.

9. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (1) The investments will represent approximately 1.15% of the Pension Plan's assets, 0.8% of the Carpenter's Plan's assets, and 2.1% of the Welfare Plan's assets; (2) The limited partnership units will be acquired by the Plans on the same terms as they will be offered to all other investors in such units; (3) JHTC, the Plans' independent fiduciary, has reviewed the proposed transaction and determined that it is appropriate for the Plans and in the best interests of their participants and beneficiaries; and (4) JHTC will monitor the investments on behalf of the Plans and has the authority to sell the investments in the event it determines that it is in the Plans' best interests to do so.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

State Farm Insurance Companies' Incentive and Thrift Plan for United States Employees (the Plan), Located in Chicago, Illinois

[Application No. D-8329]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) on August 29, 1989, of 219,700 shares of Joslyn Corporation (Joslyn) common stock (the Stock) by the Plan to State Farm Mutual Automobile Insurance Company (the Company), a party in interest with respect to the Plan, provided that the Company reimburses to the Plan an amount equal to the difference between the cost to the Plan of purchasing the Stock and the proceeds received by the Plan from the sale of the Stock to the Company; and further provided that the Company reimburses the Plan $3,295.50 for the commission paid by the Plan incidental to the Sale.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective August 29, 1989.

Summary of Facts and Representations

1. The Plan is a defined contribution plan established by the Company and certain of its affiliates. The Plan also meets the requirements for treatment as a cash or deferred arrangement under section 401(k) of the Code. The Plan has three named trustees (the Trustees), all of whom are officers of the Company. The Plan has approximately 40,000 participants and $700,000,000 in assets.

The Plan provides for three pooled investment funds, consisting of the Equities Account, the Balanced Account and the Fixed Income Account. Plan participants may elect to allocate the assets in their individual accounts under the Plan to any of the aforementioned funds in any combination. The Equities Account invests primarily in common stock and other equity securities, with an investment objective of long-term growth of capital and income.

Under the Plan and the related Trust Agreement for the Plan, the Company is responsible for making investment decisions with respect to the assets of each of the pooled investment funds under the Plan, including the Equities Account. Accordingly, all investment decisions are made by the Company through its investment department (the Investment Department).

2. Over a two year period from April 1, 1985 through March 4, 1987, the Investment Department purchased the Stock on behalf of the Plan's Equity Account. The Stock was purchased on the Over the Counter market at an average price of $31.68 per share, resulting in an expenditure to the Plan of $6,959,675.00. As of August 29, 1989, the

[2] The Department notes that section 404(a)(1) of the Act requires, among other things, that a fiduciary of a Plan must act prudently, solely in the interest of the Plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a Plan. In order to act prudently in making investment decisions, the fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the Plan. Investing the Plans' assets in the partnership units would not satisfy section 404(a)(1) if such investments would provide the Plans with less return, in comparison to risk, than comparable investments available to the Plans or if the partnership units would involve a greater risk to the security of the Plans' assets than other investments offering a similar return.

Thus, in deciding whether and to what extent to invest in the partnership units, the fiduciary must consider only factors relating to the interests of the Plans' participants and beneficiaries in their retirement incomes. A decision to invest in the partnership units may not be influenced by a desire to stimulate business in a particular geographic area or to encourage the use of union labor unless the investment, when judged solely on the basis of its economic value, would be equal to or superior to alternative investments available to the Plan.

Stock represented .94 percent of the Plan's assets.

3. In August 1989, the Investment Department lost confidence in the new management of Joslyn and became concerned about the prospects of future earnings of Joslyn. The applicant represents that the Stock had not performed well during the period in which it was held by the Plan.[3] Based on the Stock's poor performance and the speculative nature of future gain, the Investment Department determined that the Stock was no longer an appropriate holding for the Equity Account's portfolio of common shares. Accordingly, the Investment Department determined to sell the Stock from the Equity Account.

4. The applicant represents that the Investment Department believed that it was in the best interests of the Plan to sell the Stock directly to the Company, due primarily to the limited trading interest in the Stock and the problems associated with block selling. There are only three dealers in the Stock, and the Plan owned slightly less than 5 percent of the outstanding shares. The applicant notes that a sale of a large block would likely depress the market price for the Stock. Additionally, if the Plan attempted to sell the Stock in small lots over time, or to entities other than the Company, the market price for the Stock would also likely be depressed.

5. On August 29, 1989, the Plan sold its entire holdings of the Stock to the Company. The Plan paid a brokerage commission to Smith Barney of 1½ cents per share ($3,295.50) incidental to the sale. The Plan received net proceeds from the Sale of $6,450,392.00, based on an Over the Counter market price on the date of the Sale of $29.36 per share. This price was determined by using the midpoint value of the inside market quote (highest bid-lowest offering) on the date of the transaction.

6. The applicant submitted a letter dated June 27, 1990, from Merrill Lynch, an independent market maker in Joslyn. In this letter, Merrill Lynch states that it has reviewed the terms of the Sale, and that based on the relatively light trading activity in the Stock, they are of the view that if the Plan had attempted to dispose of its entire 219,700 share holding on the open market, it would have depressed the market price of the Stock. Furthermore, Merrill Lynch concluded that the amount received by the Plan from the Sale was at least as favorable as what it would have received had the shares been sold in the open market.

[3] The applicant also notes that the Stock has not appreciated in value since the date of the Sale.

7. In the course of its established internal review procedures, the Company subsequently became aware that the Sale was prohibited under section 406 of the Act. On September 12, 1989, the Trustees were informed that a prohibited transaction had occurred. The Trustees contacted legal counsel, and an application for exemption was subsequently filed with the Department.

8. The applicant represents that, if the exemption is granted, the Company will make a contribution to the Plan in an amount equal to the difference between the cost to the Plan of purchasing the Stock and the proceeds received by the Plan from the sale of the Stock to the Company. Such contribution will be in addition to the amount required under the Plan. The applicant further represents that such contribution will not exceed the limitations of section 415 of the Code. The Company will also reimburse the Plan $3,295.50 for the commission paid incidental to the Sale.

9. In summary, the applicant represents that the transaction satisfies the terms and conditions of section 408(a) of the Act because:

(a) The Plan was paid the fair market value for the Stock, based on an objective third party source, (the Over the Counter market price determined by using the midpoint value of the inside market quote at the time of the transaction); (b) An independent market maker, Merrill Lynch stated that the amount received by the Plan from the Sale was at least as favorable as what it could have received had the shares been sold on the open market; (c) The Company is willing to reimburse the Plan an amount equal to the difference between the cost to the Plan of purchasing the Stock and the amount received by the Plan from the Sale; (d) The Company will reimburse the Plan $3,295.50 for the commission paid incidental to the Sale; and (e) The Company has demonstrated good faith with regard to the transaction by, among other things, promptly identifying it as prohibited under section 406 of the Act pursuant to its internal review procedures, and by filing an exemption application with the Department.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliates thereof) results in the plan's either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including Sections 401(a)(4), 404, and 415.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Madsen of the Department, telephone (202) 523–8881. (This is not a toll-free number).

Pathology and Laboratory Medicine, P.C. Profit Sharing Plan (the PALM Plan); and Dekalb-Gwinnett Pathologists, P.C. Profit Sharing Plan (the Dekalb Plan; Collectively the Plans) Located in Atlanta, Georgia

[Application Nos. D–8363 and D–8364]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a)(1)(D) and (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (B), (D), and (E) of the Code,[4] shall not apply to proposed loans (the Loans) by certain individually directed accounts of the Plans (the Account or Accounts) in amounts totaling $390,000 to PLINC Partners (PLINC); provided that no more than 25% of the assets of any of the Accounts is involved in the Loans and provided further that the terms of the Loans are and remain at least as favorable to any of the Accounts as terms negotiated at arm's length with unrelated third parties.

Summary of Facts and Representations

1. The Plans are both profit sharing plans, qualified pursuant to section 401(a) of the Code, which permit individual participants to direct the investments of the assets in their Accounts. As of December 31, 1989, the PALM Plan and the Dekalb Plan, had ten (10) and seven (7) participants, respectively. On December 31, 1988, the PALM Plan and the Dekalb Plan had assets of approximately $2,329,300 and $1,739,022, respectively. The assets of each of the Plans are held in trust by Hugh C. Moore, the Trustee (the Trustee) for each of the Plans. The trustee is also a participant in the PALM Plan and an employee of Pathology and Laboratory Medicine, P.C., (P&LM).

2. P&LM, a professional corporation organized under the laws of the State of

[4] For purposes of this proposed exemption the references made to provisions of Title I of the Act, unless otherwise specified, shall be deemed to include parallel provisions of the Code.

Georgia with offices located in Atlanta, sponsors the PALM Plan for its employees and also serves as plan administrator.

P&LM is owned by four doctors (the P&LM Doctors) each of whom is a twenty-five percent (25%) stockholder in P&LM, an employee in P&LM, and a participant in the PALM Plan. The P&LM Doctors are: Myung Y. Chang, M.D., Christopher J. Allen, M.D., James C. Bootle, M.D., and Raphael K. Graves, M.D. The Trustee and Drs. Allen, Bootle, and Graves serve as officers and directors of P&LM. [5]

Dekalb-Gwinnett Pathologists, P.C., (DGP), a professional corporation with offices located in Atlanta, is organized under the laws of the State of Georgia and sponsors the Dekalb Plan for its employees.

DGP is owned by five doctors (the DGP Doctors) each of whom is a twenty percent (20%) stockholder in DGP, an employee of DGP, and a participant in the Dekalb Plan. The DGP Doctors are: Frank Matthews, M.D., Alexander T. Parkinson, M.D., Rene A. Tapia, M.D., Hilary K. Hargreaves, M.D., and Edwin W. Nunnery, M.D., The Trustee and Drs. Matthews, Parkinson, Tapia, and Nunnery serve as officers and directors of DGP.[6]

Both P&LM and DGP are engaged in the business of providing pathology services to hospitals in the Atlanta area.

3. PLINC, a partnership established under the laws of the State of Georgia, has offices located at 3300 Buckeye Road, Suite 178, in Atlanta, Georgia. PLINC was formed to won, sell, hold for appreciation, lease, develop, and manage real estate, or to engage in any other trades or businesses approved by its partners. There are twelve partners in PLINC (the PLINC Partners) whose ownership interests range from 10% to 1.25%. The four P&LM Doctors, and three of the five DGP Doctors each own a ten percent (10%) interest in PLINC. The Trustee is also a partner in PLINC with a 7.5% partnership interest. The four remaining PLINC Partners are Tom D. Raaen, L. David Stacy, W. Verlon Bexley, and Nelda Warner, who own, respectively, 10%, 10%, 1.25%, partnership interests in PLINC. Tom. D. Raaen, and L. David Stacy, were formerly owners of and employed as physicians by the corporation which was the predecessor of P&LM and DGP. It is represented that Tom D. Raaen recently retired from DGP, and L. David Stacy is no longer associated with P&LM. W. Verlon Bexley, and Nelda Warner were also formerly employed, respectively, as cytologist and chief technician by the corporation which was the predecessor of P&LM and DGP, but are no longer so employed.

4. It is represented that provisions of the plan documents of both the PALM Plan and the Dekalb Plan permit participants to direct the investment of their Accounts in their respective Plans. In accordance with such plan provisions, eight (8) participants (the Eight Participants), wish to direct the investment of part of their respective Accounts into the Loans to PLINC in an amount totaling $390,000. Four of the Eight Participants are in the PALM Plan, and the other four are participants in the Dekalb Plan. The Eight Participants are Drs. Chang, Allen, Bottle, Graves, Matthews, Parkinson, Tapia, and Hargreaves. It is represented that all Eight Participants are parties in interest under the Act with respect to their Accounts either in the PALM Plan or to the Dekalb Plan. Seven of the Eight Participants are also partners in PLINC.

It is represented that less than 25% of the assets of any of the Eight Participants' Accounts will be invested in the Loans. The dollar amount each of the Eight Participants proposes to loan to PLINC, the total of the assets in each Account, as of December 31, 1988, and the percentage of such assets to be invested in the Loans are set forth below:

Participant	Loan amount	Account	Percent of account
Graves	$54,000	$695,577	7.76
Allan	54,000	597,746	9.03
Chang	54,000	439,934	12.27
Bottle	54,000	417,344	12.94
Matthews	54,000	804,541	6.71
Parkinson	54,000	364,136	14.83
Hargreaves	12,000	50,955	23.55
Tapia	54,000	464,160	11.63

5. It is represented that the terms of the Loans will be evidenced by promissory notes and such terms are similar to those that would have been required by an unrelated third party commercial lender. In this regard, the Trustee represents that he contacted the First National Bank of Atlanta (First Atlanta) to determine the terms under which First Atlanta would lend money to PLINC.

It is represented that the interest rate on the Loans will be fixed at closing at a rate equal to one quarter of one percent (.25%) per annum over the prime rate as established by First Atlanta. As PLINC would not be charged any points to borrow money by First Atlanta, it is represented that PLINC will not pay any points in connection with the Loans. Interest on the Loans will be calculated monthly in arrears for each day elapsed and will be computed on a 365 day year. The Loans will be repaid in thirty-four (34) consecutive monthly installments of principal and interest based on a five year amortization schedule, beginning on the first day of the first month from the date of the closing on the Loans.

It is represented that PLINC will write a separate check to the Trustee of each of the Plans. Each check will be in the total amount of principal and interest payable on four of the eight Loans held as directed investments for four of the Eight Participants who are, respectively, in the PALM Plan and the Dekalb Plan. It is represented that the Trustee will allocate to the Accounts of each of the Eight Participants in each of the Plans their proportionate share of the Loans. The entire unpaid balance of principal and interest shall be due and payable in the thirty-fifth (35th) month. It is represented that no commissions will be paid by the Plans or the Accounts in connection with the Loans.

The Loans will be secured by a first mortgage on a parcel of improved real property (the Property) located at 3175 Presidential Drive, Land Lot 294, 18th District, Dekalb County, Georgia, which is owned by PLINC. The deed will be recorded in the Deed Book Records of Dekalb County, Georgia, under applicable Georgia law, and will convey a first security title on the Property to the Trustee of the PALM Plan and the Dekalb Plan. It is represented that the Loans will not increase the risk of loss to the Accounts, because the Loans will be secured by a recorded first lien deed. Further, PLINC will furnish the Plans with a fire and extended coverage insurance policy with a mortgage loss payable clause satisfactory to the Plans prior to closing on the Loans.

It is represented that the proposed transactions are protective of the Accounts in that the Property serving as collateral has been valued in two independent appraisals, as discussed below. It is also represented that First Atlanta would make the proposed Loans based on the most recent of the two appraisals which estimates the value of the Property to be approximately six (6) times the amount of the Loans.

6. The Trustee submitted two appraisals of the Property prepared by independent qualified appraisers. Jack L.

[5] As such the Trustee and the P&LM Doctors are parties in interest with respect to the PALM Plan under section 3(14)(H) of the Act and disqualified persons with respect to the PALM Plan under section 4975(e)(2)(H) of the Code.

[6] As such the Trustee and the DGP Doctors are parties in interest with respect to the Dekalb Plan, pursuant to 3(14)(H) of the Act and disqualified persons with respect to the Dekalb Plan under section 4975(e)(2)(H) of the Code.

Lewis, MAI, assisted by Frank B. Roberts, MAI, both of whom are employees of Frank B. Roberts and Associates in Atlanta, Georgia, valued the Property together with certain special purpose equipment, as of May 22, 1980, at $1.2 million. Henry B. Green Jr., President of Cheves/Green, real estate appraisers and consultants, in Atlanta, Georgia, and his associate, George W. Kennedy, MAI, updated the appraised value of the Property as of March 8, 1990, to $2.4 million. It is represented that the values of the Property established by both appraisals were based on the three approaches to valuation: cost approach, market approach, and income approach.

According to the 1990 appraisal report, the Property contains approximately 20,613 square feet and is located on an approximately 2.5 acre site. It is represented that during early 1990 the interior of the Property was entirely reconstructed to meet specifications as a Certified National Drug Testing Facility at an estimated cost of $668,436 to SmithKline Beecham Clinical Laboratories (SmithKline), the tenant. SmithKline is described by the appraisers as one of the five largest pharmaceutical/medical service companies in the world. It is represented that the original lease on the Property would have expired in October 1993. However, prior to the expenditure for the remodeling, the lease was extended for three additional three (3) year periods which will carry the lease term to the year 2002. As of March 1990, the rent was established at $19,100 a month ($299,200 annually) with the next rent adjustment to be calculated in October 1990, and every three years thereafter. Taxes and insurance are the responsibility of PLINC, the landlord. All maintenance, repairs, utilities, and janitorial services are the responsibility of SmithKline.

7. Since December 8, 1978, the Property has served as collateral for a note (the Note) originally made by Physicians' Laboratory, Inc. (PLI). It is represented that PLINC has assumed all the obligations of PLI, the maker of the Note. The Note evidences a loan (the Existing Debt), originally in the amount of $575,000, made by the National Bank of Georgia to PLI. It is represented that payments on the Existing Debt are to be made over a twenty-five (25) year period ending in 1996. However, the Eight Participants represent that proceeds from the proposed Loans will be used to refinance the Existing Debt.

8. In summary, the Trustee represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The terms of the loans will be similar to terms required by an independent commercial lender, First Atlanta;

(b) The Loans will be secured by collateral with a value determined by independent appraisals of at least 150% of the outstanding principal balances of the Loans;

(c) The amount which any Account invests in the Loans will not exceed 25% of the assets of such Account;

(d) The Loans will be made at the direction of individual participants, and will be held in directed investments of the Accounts of each of these Eight Participants; and

(e) The Loans will affect only the individually directed Accounts of the Eight Participants in the Plans who choose to participate in the Loans.

Notice to Interested Persons: Because only the individually directed accounts of Eight Participants who choose to invest in the Loans will be affected by the proposed transactions, it has been determined by the Department that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Inventory Sales Co. Employee Stock Ownership Plan and Trust (the Plan), Located in St. Louis, Missouri

[Application No. D–8369]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale of a term life insurance policy (the Policy) on the life of James S. Friedmann (the Insured), a party in interest with respect to the Plan, from the Plan to the Insured, provided the sales price is no less than the fair market value of the Policy on the date of the sale.

Summary of Facts and Representations

1. The Plan is an employee stock ownership plan covering approximately 50 participants as of April 16, 1990. As of December 31, 1989, the Plan's assets totalled $170,304.56. The trustee of the Plan is Elizabeth L. Friedmann. The Insured owns 50% of the outstanding issued stock in Inventory Sales Co. (the Employer), which maintains the Plan, and is also the president and director of the Employer; however, the Insured is not a participant in the Plan.[7]

2. The Policy is a term life insurance policy in the face amount of $1 million insuring the life of the Insured. The Plan acquired the Policy at no cost and has never paid any premiums due under the Policy. The Policy was needed at the inception of the Plan to secure obligations described below in the event of the Insured's untimely death and was issued at the request of Jefferson Bank & Trust Co. (the Bank), which indirectly financed the Plan's purchase of Employer stock.[8] The Policy was issued by Transamerica Occidental Life Insurance Co. (the Insurer) on November 12, 1987, when the Employer was in the process of establishing the Plan (which was established on March 11, 1988, effective January 1, 1988).

3. The original owner of the Policy was Gerald A. Putz, a former stockholder of the Employer. The Plan purchased all of the Employer stock owned by Mr. Putz. To finance that purchase (the Purchase), the Employer negotiated a loan commitment from the Bank, and the monies from such commitment, in turn, were loaned to the Plan for use in making the Purchase. In regard to the loan to the Plan, the Plan gave the Employer a promissory note and a pledge of the Employer stock acquired by the Plan.[9] The Policy was

[7] The applicant states that the proposed transaction is similar to the transaction covered by Prohibited Transaction Exemption 77–8 (42 FR 31574, June 21, 1977), the class exemption involving the transfer of individual life insurance contracts and annuities from employee benefit plans to plan participants, certain beneficiaries of plan participants, employers, and other employee benefit plans. However, the proposed transaction is not covered by the class exemption because the Insured is not a participant in the Plan.

[8] One oe the characteristics of an employee stock ownership plan is that it is designed to invest primarily in qualifying employer securities, such as stock. See paragraphs (6) and (5) of section 407(d) of the Act and the regulations thereunder for the respective definitions of the terms "employee stock ownership plan" and "qualifying employer securities." The Department is expressing no opinion herein as to whether or not the Plan's acquisition of Employer stock satisfied the requirements of these provisions of the Act.

[9] The Department is expressing no opinion herein as to whether or not the loan to the Plan satisfied

Continued

collaterally assigned to the Bank on March 3, 1988. Effective November 6, 1989, the ownership of the Policy was transferred to the Plan at no cost to the Plan.[10] On February 1, 1990, the Bank released all its right, title, and interest in the Policy in view of the sufficient growth of Plan assets (and of Employer assets) to protect adequately, without the Policy, the obligations under the loan to the Plan. The Plan recently became the beneficiary under the Policy.

4. It is represented that the Insurer is not related in any fashion, other than as the insurer on the Policy, to either the Employer or the Insured. The Insurer has provided the following information regarding the Policy:

(a) The present market value of the Policy will vary monthly by the value of the "unearned" premium, which is the amount of premium paid that has not been used to provide insurance from the present to the next yearly anniversary date of the Policy. From the Policy's monthly anniversary date of June 12, 1990, the unearned premium on the Policy would be $816.67 to the Policy's yearly anniversary date of November 12, 1990. Consequently, the fair market value of the Policy to the Insured is $816.67 on June 12, 1990.

(b) The surrender value of the Policy is zero. The Policy is a term insurance policy which does not develop a cash surrender value.

(c) The face death benefit of the Policy is $1,000,000. The unearned premium of $816.67 as of June 12, 1990 may be utilized as a premium towards conversion to a permanent insurance policy or may be used to continue the term insurance until November 12, 1990, when, with no further premium payments, the Policy would lapse.

(d) There are no provisions for refunds of unearned premiums to the policy owner.

5. The Plan wishes to transfer the Policy to the Insured for a price equal to the unearned premium on the Policy which, according to the Insurer, is the fair market value of the Policy. The insured will pay the sales price to the Plan in a cash lump sum on the date of the sale. The Plan will incur no expenses relating to the sale of the Policy because any and all such costs will be borne by the Employer.

6. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the sale price will equal the fair market value of the Policy, as determined by the Insurer, which is not related to either the Employer or the Insured except as the insurer of the Policy; (c) the Plan will incur no expenses relating to the sale of the Policy because any and all such costs will be borne by the Employer; and (d) the Plan is the beneficiary under the Policy.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund, of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of September 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90–21422 Filed 9–11–90; 8:45 am]

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the requirements of section 408(b)(3) of the Act, which exempts certain loans to employee stock ownership plans under specified conditions, or as to whether or not said loan, the Purchase, or the holding of Employer stock by the Plan satisified or satisfies the fiduciary requirements of section 404(a), which, among other things, charges a fiduciary to discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

[10] No exemption has been requested, and none is proposed herein, for any violation of the prohibited transaction provisions of the Act which may have arisen with respect to the transfer of the ownership of the Policy to the Plan. In addition, the Department notes that the fiduciary requirements of section 404(a) also apply with respect to the Plan fiduciary's decision to acquire the ownership of the Policy.

NATIONAL SCIENCE FOUNDATION

Committee Management; Establishment

The Assistant Director for Geosciences has determined that the establishment of the DOE/USGS/NSF Council for Continental Scientific Drilling is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: DOE/USGS/NSF Council for Continental Scientific Drilling.

Purpose: The primary objective of the Council is to provide an overview of the national continental scientific drilling program (CSDP) which is being coordinated by the Interagency Coordinating Group for Continental Scientific Drilling (ICG/CSD).

CCSD activities will include an assessment of and recommendations concerning:

(a) The annual accomplishments of CSDP;

(b) The performance of the component elements of the CSDP;

(c) Program priorities and balance;

(d) Long term program goals.

In addition CCSD will conduct specialized studies when requested by the ICG/CSD.

Balanced Membership Plan: Members will be chosen to ensure an approximately balanced representation of the scientific community in the earth sciences and fields of drilling and downhole drilling technologies. Additional factors that will be taken into account are:

(a) Members selected for their scientific and/or technical skills to represent a diverse range of the various subareas and subdisciplines that are interested in continental scientific drilling.

(b) Balance of institutional representation to cover the interests of federal, academic, industrial and other private institutions.

(c) Appropriate geographic distribution.

(d) Balanced representation by women and other underrepresented minorities.

(e) Membership and representation of all interests will be determined in accordance with the requirements of the Federal Advisory Committee Act (Pub. L. 92–463), The Department of Energy Organization Act (Pub. L. 95–91), and implementing regulations.

Responsible NSF Official: Dr. Ian McGregor, Head, Major Projects Section, Division of Earth Sciences, National Science Foundation, room 602, 1800 G Street NW., Washington, DC 20550 (202) 357–9591.

Dated: September 6, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–21292 Filed 9–11–90; 8:45 am]

BILLING CODE 7555-01-M

Membership of National Science Foundation's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Announcement of membership of the National Science Foundation's Senior Executive Service Performance Review Board.

SUMMARY: This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESS: Comments should be addressed to Director, Division of Personnel and Management, National Science Foundation, room 208, 1800 G Street NW., Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Mr. John Wilkinson or Ms. Barbara Patala at the above address or (202) 357–7857.

SUPPLEMENTAL INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Permanent Membership

John A. White, Acting Deputy Director, Chairperson

Jeff Fenstermacher, Assistant Director for Administration, Executive Secretary

Rotating Membership

Adriaan M. de Graaf, Deputy Director, Division of Materials Research, Directorate for Mathematical and Physical Sciences

Lynn Preston, Deputy Director, of Engineering Centers, Directorate for Engineering

Donald F. Heinrichs, Head, Oceanographic Centers and Facilities Section, Division of Ocean Sciences, Directorate for Geosciences

Richard R. Ries, Executive Officer, Directorate for Scientific, Technological and International Affairs

W. Franklin Harris, Executive Officer, Directorate for Biological, Behavioral and Social Sciences

Terence Porter, Director, Division of Research Career Development, Directorate for Education and Human Resources

Constance K. McLindon, Director, Office of Information Systems, Office of the Director

Charles N. Brownstein, Executive Officer, Directorate for Computer and Information Science and Engineering.

Dated: September 6, 1990.

Margaret L. Windus,

Director, Division of Personnel and Management.

[FR Doc. 90–21293 Filed 9–11–90; 8:45 am]

BILLING CODE 7555-01-M

Nuclear Regulatory Commission

[Docket No. 50–483]

Union Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–30, issued to Union Electric Company, (the licensee), for operation of the Callaway Plant, located in Callaway County, Missouri.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would include revisions to the Technical Specification Tables 2.2–1, 3.3–4 and 4.3–1 and associated Bases to accommodate the proposed replacement of the current Resistance Temperature Detector (RTD) bypass system with an RTD/thermowell system mounted directly into the hot and cold legs of the reactor coolant system.

The proposed action is in accordance with the licensee's application for amendment dated April 12, 1990, as supplemented by a letter dated July 7, 1990.

The Need for the Proposed Action

Experience has demonstrated that the current RTD bypass design has two significant drawbacks:

(1) *Lack of Reliability*: Plant shutdowns have been required due to leakage from equipment related to the RTD bypass manifold arrangement or because of flow reductions in the bypass piping due to valve problems.

(2) High Radiation Dose: A significant number of crud traps exist in the bypass piping, resulting in increased Man-rem accumulation while work is being done on or near the RTD bypass manifold system.

The proposed RTD system would eliminate all the bypass piping and its associated problems while providing the capability of replacing RTDs without draining down the reactor coolant system.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TSs. The proposed amendment would accommodate the replacement of the current RTD bypass system with an RTD/thermowell system mounted directly into the hot and cold legs of the reactor coolant system. The replacement of the current RTD bypass system with a direct measurement RTD system with its subsequent removal of the bypass manifold piping would not significantly increase the probability or consequences of any accidents previously analyzed. No significant changes in the types or amounts of radiological effluents during normal operation or postulated accidents that may be released offsite are incurred by this proposed modification. As a result, no significant increase in the individual or cumulatiye occupational radiation exposure is noted.

Therefore, since the proposed changes do not increase the probability or

consequences of accidents, no changes are being made in the types or amounts of any radiological effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on June 14, 1990 (55 FR 24172). No request for hearing or petition for leave to intervene was filed following this notice.

With regard to potential nonradiological impacts, the proposed change to the TS involves a system located within the restricted areas as defined by 10 CFR part 20. The proposed change will not result in a measurable change to the nonradiological plant effluents and therefore will not have any environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Callaway Plant dated January 1982.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated April 12, 1990 and supplement dated July 7, 1990, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Dated at Rockville, Maryland, this 5th day of September 1990.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90–21415 Filed 9–11–90; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 24th meeting on September 19 and 20, 1990, room P–110, 7920 Norfolk Avenue, Bethesda, MD, 8:30 a.m. until 5 p.m. each day. The entire meeting will be open to the public.

The purpose of the meeting will be to review and discuss the following topics:

- The Committee will discuss a response to the EPA's request for clarification of the comments made by ACNW which critique the EPA's high-level waste standards.
- The Committee may review the NRC staff's evaluation of the NAS/NRC report on "Rethinking High-Level Radioactive Waste Disposal."
- The Committee will hear a presentation on EPRI's performance assessment methodology for a HLW repository.
- The Committee will define the strategy and schedule for responding to recent requests to review technical issues involved in the disposal of mixed waste with an emphasis on the resolution of conflicts between NRC's and EPA's regulations, and to review subsystem requirements within 10 CFR part 60 to determine their conformance with the EPA high-level waste standards.
- The Committee will review the "Public Comment" version of the Format and Content Guide for High-Level Waste Repository Licensing Applications.
- The Committee will discuss anticipated and proposed Committee activities, meeting agenda, administrative, and organizational matters, as appropriate. The members will also discuss matters and specific issues which were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the Federal Register on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: September 6, 1990.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90–21416 Filed 9–11–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–20787; License No. 29–21452–01 EA 90–060

Consolidated NDE, Incorporated, Woodbridge, NJ; Order Imposing a Civil Monetary Penalty

I

Consolidated NDE, Incorporated (licensee) is the holder of Byproduct Material License No. 29–21452–01 issued by the Nuclear Regulatory Commission (Commission or NRC) which authorizes the licensee to possess and use

byproduct material for the conduct of industrial radiography and related activities. The license was most recently renewed on October 6, 1983, and although scheduled for expiration on September 30, 1988, has remained in effect pursuant to 10 CFR 30.37(b) since the licensee has submitted a timely application for renewal.

II

Three NRC safety inspections of the licensee's activities under the license were conducted at the licensee's facility in Woodbridge, New Jersey and at various field sites on November 14, 15 and 29, 1989, March 20 and April 25, 1990. The results of these inspections indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated May 2, 1990, covering the violations identified as a result of the November 1989 and March 1990 inspections. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice with two letters, both dated July 9, 1990. In its responses, the licensee denied Violations A and E.1, as well as examples of Violations B and C in the Notice, and requested mitigation of the proposed civil penalty.

III

Upon consideration of the licensee's responses and the statements of fact, explanation, and argument for mitigation contained therein, the NRC Staff has determined, as set forth in the appendix to this order, that the violations occurred as stated in the Notice, and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, It is hereby ordered that:

The licensee pay a civil penalty in the amount of $10,000 within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies of the hearing request shall also be sent to the Assistant General Counsel for Hearing and Enforcement at the same address, and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as described in Violations A, B.1, C.1 and E.1 set forth in the Notice referenced in section II above, which the licensee denied, and

(b) whether, on the basis of such violations, and the additional violations set forth in the Notice of Violation, which the licensee admitted, this Order should be sustained.

Dated at Rockville, Maryland this 5th day of September 1990.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix—Evaluation and Conclusion

On May 2, 1990, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued to Consolidated NDE, Inc., Woodbridge, New Jersey, for violations identified during NRC inspections. The licensee responded to the Notice by two letters, both dated July 9, 1990. In its response, the licensee denied two of the violations, Violations A and E.1, and denied examples of two other violations (Example B.1 and C.1). The licensee also requested mitigation of the civil penalty proposed for the violations. The NRC's evaluation and conclusion regarding the licensee's arguments are as follows:

1. Restatement of the Violations

A. 10 CFR 34.41 requires, in part, that during each radiographic operation, the radiographer or radiographer's assistant maintain direct surveillance of the operation to protect against unauthorized entry into a high radiation area, unless the area is locked or equipped with a control device or an alarm system as described in 10 CFR 20.203(c)(2).

Contrary to the above, for approximately two minutes on March 20, 1990, while a radiographic operation was being performed on an in-ditch pipeline at a field site in Lacey Township, New Jersey, direct surveillance over the radiographic operation was not maintained (in that the high radiation area was completely out of view of the licensee's radiographer and his assistant and an individual could have gained access to the source without being observed by the radiographer), and the area was neither locked nor equipped with a control device or an alarm system described in 10 CFR 20.203(c)(2).

B. 10 CFR 20.203 (b) and (c)(1) require, respectively, that each radiation area and high radiation area be conspicuously posted with a sign or signs bearing the radiation caution symbol and the words: "Caution—Radiation Area" or "Caution—High Radiation Area."

Contrary to the above, on March 20, 1990, although a "radiation area and high radiation" area were created whenever a licensee radiographer performed radiographic operations at a field site in Lacey Township, New Jersey,

1. the radiation area was not conspicuously posted, in that only one sign was posted and it could only be seen from one direction; and

2. the high radiation area was not posted with any signs.

C. 10 CFR 34.43(b) requires that a physical radiation survey be made with a calibrated and operable radiation survey instrument after each radiographic exposure to determine that the sealed source has been returned to its shielded position. The survey must include the entire circumference of the exposure device and the source guide tube.

Contrary to the above;

1. On March 20, 1990, after a radiographic exposure was completed at a field site in Lacey Township, New Jersey, the licensee's radiographer's survey consisted of approaching the exposure device and placing the meter down beside it, but did not include the entire circumference of the exposure device and the entire length of the source guide tube to ensure that the sealed source had returned to its shielded position; and

2. On August 17, 1989, after a radiographic exposure was completed at a field site in Petersburg, Virginia, the licensee's radiographer's survey was inadequate in that it was made with an inoperable radiation survey instrument and did not include the entire circumference of the radiographic exposure device.

D. 10 CFR 34.33(a) requires, in part, that the license not permit any individual to act as a radiographer or radiographer's assistant unless, at all times during radiographic operations, the individual wears a direct-reading pocket dosimeter and either a film badge or a thermoluminescent dosimeter (TLD).

Contrary to the above, on March 20, 1990, at a field site in Lacey Township, New Jersey,

a license radiographer did not wear a pocket dosimeter, nor a film badge or TLD, during radiographic operations.

E. Condition 17 of License No. 29–21452–01 requires, in part, that licensed material be possessed and used in accordance with statements, representations and procedures contained in the application received on August 15, 1983, and a letter dated May 9, 1985.

1. The Operating and Emergency Procedures included with the May 9, 1985, letter, state, in section I, Page 1, paragraph C, that perimeter radiation area surveys will be performed before radiography begins and each time a handling procedure varies which will change the previously established radiation output perimeter.

Contrary to the above, radiography was performed on March 20, 1990 at a field site in Lacey Township, New Jersey, and a perimeter radiation survey was not performed before radiography began, nor was a survey performed after manipulation of the collimator which would change the previously established radiation output perimeter.

2. The Licensee's Operating and Emergency Procedures for Use of Radioactive Byproduct Material, included with the application and letter, require, in section IV, Page 5, Item 16, that the SPEC Model 2–T exposure device be locked after a physical survey is performed to ascertain that the source has returned to the shielded position.

Contrary to the above, on August 17, 1989 after radiography was performed at a field site in Petersburg, Virginia, the SPEC Model 2–T exposure device was not locked after a physical survey was performed by a radiographer, in order to ascertain that the source had returned to the shielded position.

These violations have been classified in the aggregate as a Severity Level III problem. (Supplements IV and VI)

Civil Penalty—$10,000 (Assessed equally among the violations)

2. Summary of Licensee Response Denying Violation A

The Licensee admits the radiographer should have instructed the radiographer's assistant to stand at a more strategic location to provide total area surveillance, and that a small portion of the high radiation area may not have been in the direct view of the radiographers. However, the licensee denies that the high radiation area was completely out of view.

The licensee states that the radiographic operations were conducted in a remote, isolated area and all personnel related to the pipeline installation had left the area. The licensee also asserts that the radiographer and his assistant did in fact maintain surveillance of the area in the direction from which entry by an individual would be expected or anticipated. The licensee states the NRC inspectors entered the restricted area by such a route and in such a manner that their sole objective was detection avoidance. The licensee also states that the likelihood of other individuals using the same route was unrealistic. Further, the licensee concludes that even if an individual(s) had followed the same access route as the NRC personnel into the area, they could not have gained access to the source without being observed. The licensee also notes that the NRC inspectors, by their own admissions, did not enter into the high radiation area.

NRC Evaluation of Licensee Response concerning Violation A

With respect to this violation, the NRC notes that the location of the radiographic operations was not remote. The work area, an in-ditch pipe line operation, was located only a few hundred feet from a major highway thoroughfare and was in a heavily populated business and residential area west of Route 9 in Forked River, Lacey Township, New Jersey.

Regardless of the location of the radiographic operations site, the licensee is not relieved of its responsibility for ensuring full compliance with all applicable NRC regulations. In this case, the fact that the NRC inspectors were able to approach the high radiation area undetected and unchallenged is precisely the reason that direct surveillance of the entire high radiation area is required. It is irrelevant that the NRC inspectors, in the exercise of basic radiation protection procedures, did not actually attempt to enter the high radiation area. At the time of the inspector's observations, the source was in the exposed position, and the radiographer and his assistant were completely out of view of the high radiation area in that they were physically located down an embankment and in a thicket of trees approximately 50 feet from the exposure device. From this position, the licensee's employees could neither detect nor prevent an entry into the high radiation area, and members of the public, who were unaware of the location of the exposed source, could have proceeded directly into the high radiation area from a variety of perimeter routes. Therefore, the violation occurred as stated in the Notice.

3. Summary of Licensee Response Denying Example B.1 of Violation B

With respect to the violation, the licensee states that two "Caution—Radiation Area" signs had been posted as required; however, due to the inclement weather, one of the signs had been blown over while the radiography was in progress.

NRC Evaluation of Licensee Response concerning Violation B

The NRC inspectors specifically located only one "Radiation Caution" sign in place at the time of the inspection. Further, during the Enforcement Conference, the licensee representatives were specifically requested by the NRC to point out on a map provided by the NRC where the "Radiation Caution" sign that blew over was located. The area pointed out by licensee management was precisely the area where the NRC inspectors were positioned for a portion of the inspection, and no "Radiation Caution" signs were in evidence at that position, either lying on the ground or posted. Therefore, the NRC concludes that the violation occurred as stated in the Notice.

4. Summary of Licensee Response Denying Example C.1 of Violation C

With respect to this violation, the licensee asserts that both the radiographer's assistant who performed the survey, and the radiographer who was present at the time, maintain that the entire circumference of the exposure device, as well as the entire length of the guide tube were surveyed. The licensee states the NRC inspectors' view of the area was at least partially obscured since they were located approximately 40 feet from the exposure device, and the survey was performed in a ditch on the other side of the pipe away from the inspectors. Under these circumstances, the licensee alleges that the inspectors could easily have been led to the misconception that the survey was inadequate. The licensee states the NRC regulations do not specifically state how a survey is to be performed, but only that a complete survey be performed. The licensee asserts that the NRC's opinion on how to conduct a survey goes beyond what the regulations require.

NRC Evaluation of Licensee Response concerning Violation C

The applicable regulation, 10 CFR 34.43(b), clearly requires that the survey include the entire circumference of the radiographic exposure device and the entire length of the source guide tube. The NRC inspectors viewed the radiographer and his assistant approach the exposure device with a survey meter and retract the source. The inspectors then observed the individuals immediately set the survey meter down and begin to change the film and manipulate the source guide tube. The inspectors clearly observed that neither the full circumference of the exposure device, nor the entire length of the source guide tube, were surveyed. The inspectors immediately approached the radiographer, informed him that the survey was inadequate, and the radiographer acknowledged that an adequate survey had not been performed. Therefore, the NRC concludes that the violation of an NRC regulation (10 CFR 34.43(b)) occurred as stated in the Notice.

5. Summary of Licensee Response Regarding Violation E.1

With respect to this Violation, the licensee asserts the radiographic operations in question were repetitious in nature. Specifically, the licensee states the pipe weld examination was continuously performed throughout the previous week, with the same radiation source and collimator, on pipe having the same diameter and wall thickness, and therefore, having the same radiation scattering characteristics. The licensee asserts the intent of the "O & E Manual" is to have the radiographer perform radiation surveys initially, and if the work is repetitious, no farther boundary surveys are necessary.

NRC Evaluation of Licensee Response concerning Violation E

The NRC agrees that if an initial perimeter radiation area survey is performed, and all subsequent radiography is performed under identical conditions, then subsequent surveys

would not need to be performed. However, the radiography was not performed under identical conditions because: (1) The inspectors observed the radiation collimator being changed three times, which resulted in a change of the radiation beam characteristics; and (2) the shielding conditions and barriers continually changed as radiography was performed on different areas of the pipeline due to different land slope considerations and changing locations of the dirt piles which acted as shielding. Therefore, the NRC concludes that the violation occurred as stated in the Notice.

6. Summary of Licensee Response Requesting Mitigation of the Civil Penalty

The licensee states that, of the violations, some are denied or involved extenuating circumstances. The licensee states the remaining violations were caused by the deliberate misconduct or negligence of otherwise properly trained and equipped employees. The licensee also states that the April 25, 1990, inspection at East Vineland, New Jersey, indirectly references deficiencies that are denied, have extenuating circumstances, or are of less significance in their severity. [Here, the licensee apparently in referring to the fact that NRC found the violations which were noted during the inspection of the licensee's activities at the field site in East Vineland on April 25, 1990 to be similar to the violations noted during the inspection at the Lacey Township site on March 20, 1990.] Based on these considerations, the licensee asserts that mitigation of the proposed civil penalty is warranted.

NRC Evaluation of Licensee Response

As previously stated, the NRC concludes that the violations occurred as stated in the Notice. Further, the NRC holds the licensee fully accountable for the activities of its employees, and expects that the licensee will provide sufficient management oversight of its employees to ensure that licensed activities are performed in accordance with regulatory requirements. Moreover, by definition in 10 CFR 34.2, a "Radiographer" is responsible to the licensee for assuring compliance with the requirements of the Commission's regulations and the conditions of the license.

In this case, the violations were classified in the aggregate at Severity Level III because they demonstrate a significant lack of attention or carelessness toward a system of NRC requirements intended to protect against exposure in excess of 10 CFR part 20 limits. In addition, although mitigation was allowed because the licensee's prior enforcement history has been good, 100% escalation of the base civil penalty is appropriate because: (1) The violations were identified by the NRC; (2) the licensee's corrective actions after the March 1990 inspection were inadequate in view of the similar violations found during the inspection of the licensee's activities at the field site in East Vineland, New Jersey, on April 25, 1990; and (3) the licensee had prior notice of the need to strictly adhere to the regulatory requirements for performing radiography Therefore, no further mitigation of the civil penalty is warranted.

7. NRC Conclusion

For the reasons set forth above, the NRC has concluded that the violations occurred as stated in the Notice of Violation and that further mitigation of the civil penalty is not warranted. Therefore, the NRC concludes that a civil penalty in the amount of $10,000 should be imposed for the violations set forth in the Notice.

[FR Doc. 90-21417 Filed 9-11-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-397]

Washington Public Power Supply System; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Washigton Public Supply System, (licensee) for an amendment to Facility Operating License No. NPF-21 issued to the licensee for operation of the Washington Nuclear Plant, Unit No. 2, located in Benton County, Washington. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on February 7, 1990 (55 FR 4288).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) regarding the operability of the Safety Relief Valves Acoustic Monitoring.

The NRC staff has advised the licensee that the proposed amendment is denied since its request is not in compliance with TMI Action Item II.D.3, "Direct Indication Relief-Valve and Safety-Valve Position."

The licensee was notified of the Commission's denial of the proposed change by letter dated September 5, 1990.

By October 12, 1990 the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell & Reynolds, 1400 L Street, NW., Washington, DC 20005-3502, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated December 4, 1989, as supplemented by letter dated March 2, 1990, and (2) the Commission's letter to the licensee dated September 5, 1990.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Richland Public Library, 955 Northgate, Richland, Washington, 99352. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 5th day of September, 1990.

For the Nuclear Regulatory Commission.

James E. Dyer,

Director, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-21418 Filed 9-11-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Computer Matching and Privacy Protection Act of 1988; Records Used in Computer Matching Programs

AGENCY: Office of Personnel Management (OPM).

ACTION: Notification of a computer matching program involving individuals who are receiving benefits, have received benefits, or who owe debts to the State of New York.

SUMMARY: As required by the Computer Matching and Privacy Protection Act of 1988, OPM is issuing a public notice of its intent to provide certain information to the State of New York's Department of Social Services. The information will be used by New York to detect, prevent, and eliminate fraud, waste, and abuse in New York's administration of the Aid to Families with Dependent Children, Medicaid, and Food Stamp programs. In addition, the information will be used by the child support program, as set forth under part D of title IV of the Social Security Act, to assist in locating absent parents and in determining the parents' ability to provide financial support for their children. New York also wants to provide the information to New York

City's Human Resource Administration (HRA), Office of Collections, in order to identify former recipients of public assistance who are now Federal employees, but who are in debt to HRA as a result of agency error, inadvertent error, or fraud.

The purpose of this notice is to advise individuals applying for or receiving benefits under any of the programs cited above, and those who owe child support payments, of the potential use of this information once New York obtains it.

DATES: Comments must be received on or before October 12, 1990.

ADDRESSES: Comments must be mailed to Philip A.D. Schneider, Assistant Director for Workforce Information, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, or delivered to room 7494 at the above address. Comments received may be inspected and reviewed between 8 a.m. and 4:30 p.m. at the above-cited room.

FOR FURTHER INFORMATION CONTACT: John Sanet, Privacy Act Advisor, Office of Workforce Information, telephone number (202) 606–1955.

SUPPLEMENTARY INFORMATION: Subsection (e)(12) of the Privacy Act (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Public Law 100–503), requires agencies that are providing data to States for use in computer matching projects to publish advance notice of new or altered matching programs. OMB Bulletin No. 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public," instructs a Federal agency participating in a computer matching program to publish advance notice in the **Federal Register** announcing the establishment of a matching program. Copies of this notice and matching report will be provided at the appropriate time to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

Authority: The Deficit Reduction Act (DEFRA) of 1984, and the Social Security Act's (42 U.S.C. 1320b–7, section 1137(a)) requirement to maintain an Income and Eligibility Verification System provide the legal authority to carry out this matching program. The providing of data is done in accordance with the Privacy Act of 1974, the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), and the Office of Management and Budget's Guidance Interpreting the Provisions of Public Law 100–503.

Categories of Records and Individuals Covered

OPM will provide New York with extracts from the Central Personnel Data File (CPDF) portion of the OPM/CENTRAL–1, General Personnel Records, Privacy Act system containing information on current Federal employees and the OPM/GOVT–1, Civil Service Retirement and Insurance Records (CSRI), system containing information on retired Federal employees. The CPDF extract to be provided contains the name, social security number, date of birth, sex, annual salary rate (but not actual earnings), service computation date of Federal service, veterans preference, retirement plan, occupational series, position occupied, work schedule (full time, part time, intermittent), agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier.

The CSRI extract will include the name, social security number, date of birth, sex, OPM's claim number, health benefit enrollment code, retirement date, retirement code (type of retirement), annuity rate, pay status of case, correspondence address, and ZIP code.

Procedure

OPM will provide extracts from the Central Personnel Data File (CPDF) portion of the OPM/GOVT–1, General Personnel Records, system published at 55 FR 3838 (February 5, 1990), and the OPM/CENTRAL–1, Civil Service Retirement and Insurance Records (CSRI), system published at 55 FR 3816 (February 5, 1990). The disclosure from the OPM/GOVT–1 system of records will be made in accordance with routine use "hh" and the disclosure from the OPM/CENTRAL–1 system of records will be made in accordance with routine uses "gg" and "jj." These records will be added to New York's Wage Reporting System data base maintained by the New York State Department of Taxation and Finance; records will be used only if a match occurs with an applicant or recipient record provided by New York State Department of Social Services.

In all cases involving benefit-recipient programs, New York will afford the recipients the opportunity to explain any unreported income. If the matched case results in a formal investigation, the appropriate employing Federal agency is contacted to verify the employment and the actual earnings. In the case of child support, the case file or judgment is reviewed to verify that the individual is in arrears.

New York will not create a separate permanent file consisting of information regarding those individuals involved in the specific matching programs agreed to with OPM, except as necessary to monitor the results of the matching programs. Information generated through the matches will be destroyed as soon as follow-up processing from the matches has been completed unless the information is required by the evidentiary process. The information provided by OPM will not be used to extract information concerning "non-matching" individuals for any purpose. The information provided by OPM to New York will not be derivatively used for matches in any program without OPM's specific written permission nor will New York duplicate or disseminate the OPM files without OPM's written permission.

Projected Dates for the Matching Program

At the end of the comment period, a copy of this notice (along with any changes made based on comments received) and the finalized matching agreement between OPM and New York will be provided to Congress and the Office of Management and Budget. Depending on the comments received, but no sooner than 30 days after this material is provided to Congress and OMB, OPM and New York will begin the data exchange. It is anticipated this data exchange will occur no sooner than November 1, 1990. Subsequent matches are projected to take place semi-annually on a recurring basis with an expected completion date of April 1, 1992. This match can be renewed at the end of that time for a period not to exceed 12 months.

Other Information

The notice being published here is in addition to any individual notice provided to the individuals.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 90–21376 Filed 9–11–90; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

September 6, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commision

("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Allstate Municipal Inc. Opportunity II
Common Stock, $0.01 Par Value (File No. 7–6189)
Apex Municipal Fund, Inc.
Common Stock, $0.10 Par Value (File No. 7–6190)
Berry Petroleum, Co.
Common Stock, $0.01 Par Value (File No. 7–6191)
Chili's Inc.
Common Stock, $0.10 Par Value (File No. 7–6192)
Liberty Corp.
Common Stock, $1.00 Par Value (File No. 7–6193)
MFS Charter Income Trust
Common Stock, No Par Value (File No. 7–6194)
Mitsubishi Bank Ltd.
American Depository Shares (File No. 7–6195)
Nuveen Performance Plus Municipal Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7–6196)
Property Trust of America
Common Stock, $1.00 Par Value (File No. 7–6197)
Smith's Food and Drug Centers, Inc.
Common Stock, $0.01 Par Value (File No. 7–6198)
Vivra, Inc.
Common Stock, $0.01 Par Value (File No. 7–6199)
Wheelabrator Technology
Common Stock, $0.01 Par Value (File No. 7–6200)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 27, 1990, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–21387 Filed 9–11–90; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

September 6, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Church & Dwight Company, Inc.
Common Stock, $1 Par Value (File No. 7–6173)
World Income Fund, Inc.
Common Stock, $0.10 Par Value (File No. 7–6174)
Greenery Rehabilitation Group, Inc.
Common Stock, $.01 Par Value (File No. 7–6175)
Tyler Corporation
Common Stock, $0.10 Par Value (File No. 7–6176)
Banner Aerospace, Inc.
Common Stock, $1 Par Value (File No. 7–6177)
Policy Management Systems Corporation
Common Stock, $.01 Par Value (File No. 7–6178)
Safeway Incorporated
Warrants (File No. 7–6179)
The Singapore Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–6180)
Suave Shoe Corporation
Common Stock, $0.01 Par Value (File No. 7–6181)
Thermo Cardiosystems, Inc.
Common Stock, $0.01 Par Value (File No. 7–6182)
Union Planters Corporation
Common Stock, $5 Par Value (File No. 7–6183)
Georgia Gulf Corporation
Common Stock, $0.01 Par Value (File No. 7–6184)
Inter-City Products Corporation
Ordinary Stock (File No. 7–6185)
Sun Distributors L.P.
Class A Limited Partnership Interest (File No. 7–6186)
Sun Distributors L.P.
Class B Limited Partnership Interest (File No. 7–6187)
United States Surgical Corporation
Common Stock, $0.10 Par Value (File No. 7–6188)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 27, 1990, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–21388 Filed 9–11–90; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–9838]

Issuer Delisting; Application To Withdraw From Listing and Registration; NS Group, Inc., Common Stock, No Par Value; Preferred Stock Purchase Rights

September 6, 1990.

NS Group, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2(d) promulgated thereunder to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

The Company's common stock and preferred stock purchase rights ("Rights") recently were listed on the New York Stock Exchange ("NYSE"). Trading in the Company's stock on the NYSE commenced on August 15, 1990 and concurrently such stock was suspended from trading on the Amex. (The Rights are currently attached to, and trade with, the common stock, and are represented by the certificates for the common stock.) In making the decision to withdraw its common stock (and the Rights attached thereto) from listing on the Amex, the Company considered the direct and indirect costs

and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the Amex. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before September 27, 1990, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-21386 Filed 9-11-90; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-20513]

Application and Opportunity for Hearing: USAir, Inc.

September 10, 1990.

Notice is hereby given that USAir, Inc. (the "Applicant") has filed an application under Section 310(b)(1)(ii) of the Trust Indenture Act of 1939, as amended (the "Act"), for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of The Connecticut National Bank ("CNB"): (a) In a single transaction under the Act and (b) under one or more of such qualified indentures and under certain other qualified indentures and other indentures described below not subject to qualification under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify CNB from acting as trustee under such qualified indentures or such other indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Applicant alleges that:

(1) CNB will act as indenture trustee under three or four separate leveraged lease indentures (each, a "Lease Indenture"), each of which will relate to a separate leveraged lease transaction in which an owner trustee, other than CNB (the "Owner Trustee"), for the benefit of an institutional investor acting as an equity participant, will issue equipment purchase notes ("Leased Aircraft Notes") to the Pass Through Trustees (as defined below) in an amount not to exceed 80% of the cost of each of such aircraft (each a "Leased Aircraft") to be financed by such transaction, and will purchase, and lease back to Applicant, the Leased Aircraft. The Leased Aircraft will consist of Boeing 767 aircraft and Boeing 737 aircraft. CNB also currently acts as indenture trustee under three separate indentures (each, an "Owned Aircraft Indenture") entered into in 1989, each of which relates to a separate transaction in which the Applicant for the benefit of a group of banks (the "Banks") issued equipment purchase notes (the "Owned Aircraft Notes") in a series of private placements to the Banks acting as interim lenders. The proceeds of the Owned Aircraft Notes issued under each Owned Aircraft Indenture were used by the Applicant to finance 100% of the cost of three Boeing 737 aircraft (each an "Owned Aircraft"). In the event of a casualty to one or more of the Owned Aircraft prior to the scheduled closing of the sale of the Pass Through Certificates (as defined below) the Applicant may determine to finance 100% of the cost of a corresponding number of new Boeing 737 aircraft to be delivered in 1990 through the transactions described above, except that equipment purchase notes will be issued directly to, and for the benefit of, the Pass Through Trustees. In such an event the Banks would not be involved in the transactions relating to such substituted aircraft; and such substituted aircraft would be Owned Aircraft, such equipment purchase notes would be Owned Aircraft Notes, and such indentures under which such notes would be issued would be Owned Aircraft Indentures. (In its capacities as indenture trustee under the Leased Aircraft Indentures and the Owned Aircraft Indentures, CNB will hereinafter be called the "Loan Trustee". The Leased Aircraft Notes and the Owned Aircraft Notes will hereinafter be called, collectively, the "Notes"; the Leased Aircraft and the Owned Aircraft will hereinafter be called, collectively, the "Aircraft"; and the Lease Indentures and Owned Aircraft Indentures will hereinafter be called, collectively, the "Indentures")

(2) The Applicant will not be a party to any of the Lease Indentures (only the relevant Owner Trustee, as issuer of the relevant Leased Aircraft Notes, and CNB, as Loan Trustee, will be parties), but the Applicant's unconditional obligation to make rental payments under the relevant lease will be the only credit source for payment on the related Leased Aircraft Notes. Following the release of the proceeds of the sale of the Leased Aircraft Notes by CNB, the Leased Aircraft Notes to be issued with respect to each Lease Indenture will be secured by a security interest in the Leased Aircraft to which such Lease Indenture relates and the right of the Owner Trustee to receive rentals on such Leased Aircraft from the Applicant. No Leased Aircraft will be covered by more than one Lease Indenture or by any other indentures, including the Owned Aircraft Indentures and the Other Indentures (as defined below), and the Leased Aircraft Notes to be issued pursuant to any one Lease Indenture will be separate from the Leased Aircraft Notes issued pursuant to any other Lease Indenture.

(3) Following release of the proceeds of the sale of the Owned Aircraft Notes by CNB, the Owned Aircraft Notes issued with respect to each Owned Aircraft Indenture will be secured by a security interest in the Owned Aircraft to which such Owned Aircraft Indenture relates and represent recourse obligations of the Applicant. No Owned Aircraft is covered by more than one Owned Aircraft Indenture or any other indenture including the Leased Aircraft Indentures and the Owned Aircraft Notes issued pursuant to any one Owned Aircraft Indenture are separate from the Owned Aircraft Notes issued pursuant to any other Owned Aircraft Indenture.

(4) There are no cross default provisions or cross collateralization between the Notes issued under one Indenture and the Notes issued under any of the other Indentures of the 1989 Indentures (as defined below) or Other Indentures.

(5) None of the Indentures will be subject to the Act and, accordingly, none will contain the language regarding conflicts required by section 310(b) of the Act for qualified indentures.

(6) The Applicant has filed a Registration Statement on Form S-3 (the "Registration Statement") covering the

proposed public offering of up to $215,000,000 aggregate principal amount of Pass Through Certificates, Series 1990–A (the "Pass Through Certificates") representing fractional undivided interests in one or more grantor trusts (each, a "Grantor Trust"), to be formed under separate Trust Agreements (each, a "Trust Agreement") between CNB, as Trustee (the "Pass Through Trustee"), and the Applicant. Although the number of Grantor Trusts will not be determined until shortly before the time of the offering of the Pass Through Certificates and will depend upon the interest rate environment at the time, it is currently anticipated that there will be four Grantor Trusts. Each Trust Agreement will be qualified as an indenture under the Act and is referred to herein as a "Qualified Indenture."

(7) Multiple series of Notes have been or will be issued under each Indenture. Each series of Notes will bear a fixed rate of interest except a single series of Owned Aircraft Notes, which will bear an interest rate based on a floating rate index plus a margin. The Pass Through Trustee under each Grantor Trust, using the proceeds of the public offering of Pass Through Certificates relating to such Grantor Trust, will purchase the Notes. Each Grantor Trust will acquire those Notes of the series issued in respect of the Aircraft having an interest rate corresponding to the interest rate applicable to the Pass Through Certificates issued by such Grantor Trust. The maturity dates of the Notes acquired by each Grantor Trust will occur on or before the final distribution date applicable to the Pass Through Certificates issued by such Grantor Trust. In the case of the purchase of the Owned Aircraft Notes by the Pass Through Trustee of each Grantor Trust, the Banks will cease to have an interest in the Owned Aircraft.

(8) Each Owned Aircraft Indenture provides that the Applicant may arrange for a sale-leaseback transaction for the Owned Aircraft to which such Indenture relates. If a sale-leaseback transaction is arranged, an owner trustee acting on behalf of one or more equity investors will acquire title to such Owned Aircraft from the Applicant, lease it back to the Applicant and assume the Applicant's obligations under the Owned Aircraft Notes on a nonrecourse basis. Upon completion of such a sale-leaseback transaction, the Owned Aircraft Notes issued therefor will no longer be direct obligations of the Applicant, but the amounts unconditionally payable by the Applicant for the lease of such Aircraft will be in an amount at least equal to payment of principal, premium, if any, and interest on such Notes. Such Notes will continue to be secured by a security interest in the Aircraft to which they relate, and will, in addition, be secured by an assignment of certain of the owner trustee's rights as lessor under the lease of such Aircraft, including the right to receive rentals payable by the Applicant thereunder.

(9) Each Qualified Indenture will provide, pursuant to section 310(b) of the Act, for the resignation of the Pass Through Trustee in the event that it does not eliminate a conflicting interest, and will provide that a trusteeship under another indenture of the Applicant constitutes a conflicting interest, provided, however, that the Applicant may apply to the Commission for a finding that no material conflict exists.

(10) CNB currently acts as pass through trustee under three qualified indentures under which the Pass Through Certificates, Series 1989–A, are outstanding (the "1989 Qualified Indentures"), and as loan trustee under eleven separate indentures related to the 1989 Qualified Indentures (the "1989 Indentures").

(11) The 1989 Qualified Indentures and the 1989 Indentures were part of a single transaction whose structure is the prototype for the proposed transaction described above. Except for differences in the number of related indentures covering owned and leased aircraft, the two structures are identical.

(12) Each of the 1989 Indentures relates to either: (i) A separate leveraged lease transaction in which an owner trustee has purchased and leases one Boeing 737 aircraft to the Applicant or (ii) a financing of one Boeing 737 aircraft owned by the Applicant. In 1989, such owner trustee, acting for the benefit of an institutional investor acting as equity participant, or the Applicant, as the case may be, issued multiple series of equipment purchase notes (the "1989 Notes"). Three grantor trusts issued three series of Pass Through Trust Certificates under three separate 1989 Qualified Indentures. The 1989 Notes issued with respect to each 1989 Indenture are secured by a security interest in the aircraft to which such 1989 Indenture relates and, in the case of a leased aircraft, also by the right of the related owner trustee to receive rentals on such aircraft from the Applicant.

(13) Each aircraft covered by a 1989 Indenture is not covered by any other indenture, and the 1989 Notes issued under each 1989 Indenture are separate from any notes issued under any other indenture. There are no cross default provisions or cross collateralization between the 1989 Notes issued under one 1989 Indenture and the 1989 Notes issued under any of the other ten 1989 Indentures.

(14) The pass through certificates issued under the 1989 Qualified Indentures represent undivided interests in the 1989 Notes held by the related pass through trustee. The 1989 Notes are not covered by any other indenture, and the pass through certificates issued under each 1989 Qualified Indenture are separate from certificates or notes issued under any other indenture.

(15) None of the 1989 Indentures is subject to the Act and, accordingly, none contains the language regarding conflicts required by section 310(b) of the Act for qualified indentures.

(16) Each 1989 Qualified Indenture provides, pursuant to section 310(b) of the Act, for the resignation of the related pass through trustee in the event that it does not eliminate a conflicting interest, and provides that trusteeship under another indenture of the Applicant constitutes a conflicting interest, provided, however, that the Applicant may apply to the Commission for a finding that no material conflict exists. On September 25, 1989 the Commission issued an order (the "1989 Order") granting an application by the Applicant (File No. 22–19550) concerning the 1989 Qualified Indentures, 1989 Indentures and Other Indentures. The 1989 Order stated that it appeared to the Commission that the trusteeships of CNB under said indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify CNB from acting as trustee under any of the said indentures.

(17) CNB also acts as indenture trustee under nine indentures (each, an "Other Indenture" and, collectively the "Other Indentures"), dated between 1985 an 1987, which relate to leveraged lease transactions in which certain owner trustees (other than CNB) for the benefit of certain institutional investors acting as equity participants, issued debt in private placements to certain institutional investors acting as loan participants. The proceeds of the debt issued under the Other Indentures were used by the Applicant to finance six Boeing 737 and four Fokker F–28 aircraft.

(18) The proceeds of the issuance of the debt under each of eight of the Other Indentures were used to finance one aircraft. The proceeds of the issuance of the debt under the remaining Other Indenture were used to finance two

aircraft. All ten aircraft were then leased back by such owner trustees to the Applicant. The Applicant is not a party to the Other Indentures (only certain institutions, acting as owner trustees and as issuers of the debt, and CNB, as indenture trustee are parties), but the Applicant is unconditionally obligated to make rental payments under the respective leases relating to such Other Indentures in amounts at least equal to the payments of all principal, premium, if any, and interest on the debt.

(19) The debt issued under each of the Other Indentures (except one) is secured by a security interest in one of the aforementioned aircraft and the right of the owner trustee to receive rentals on such aircraft from the Applicant. The debt issued under the remaining Other Indenture is equally and ratably secured by the two aircraft to which such Other Indenture relates. None of the Other Indentures contain cross default provisions, and the debt issued under each Other Indenture is not cross collateralized by the security for (i) the debt issued under each of the eight Other Indentures and (ii) the Notes issued, or to be issued, under the Indentures (and indirectly, therefore, the Pass Through Certificates to be issued under the Qualified Indentures).

(20) The Other Indentures are not subject to the Act, and, accordingly, do not contain the language regarding conflicts required by section 310(b) of the Act for qualified indentures.

The Applicant is not in default in any respect under any of the 1989 Qualified Indentures, the 1989 Indentures, the Owned Aircraft Indentures, or the Other Indentures and will not, at the time of execution thereof, be in default in any respect under any of the Qualified Indentures or the Leased Aircraft Indentures.

The Applicant has waived notice of hearing, any right to a hearing on the issues raised by this Application and all rights to specify procedures under the Commission's Rules of Practice.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to the application which is on file in the Offices of the Commission's Public Reference Section, File Number 22-20513, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested persons may, not later than October 4, 1990, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-21635 Filed 9-11-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. IP 89-09; Notice 2]

Grant of Petition for Determination of Inconsequential Noncompliance; Hella, Inc.

This notice grants the petition by Hella, Inc. of Cranford, New Jersey, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.108, "Lamps, Reflective Devices, and Associated Equipment". The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on November 16, 1989, and an opportunity afforded for comment (54 FR 47746).

Standard No. 108 requires that taillamps be designed to conform to the requirements of the Society of Automotive Engineers Standard J585e, September 1977, "Tail Lamps (Rear Position Lamps)", which specifies that a taillamp shall not exceed a designated maximum candlepower at night over any area larger than that generated by a ¼ degree radius, within a solid cone angle from 20L to 20R and from H to 10U. The maximum candela permitted for single compartment lamps such as those produced by Hella is 18 candela at H (the horizontal) or above.

The agency tested 18 single compartment combination stop and taillamps produced by Hella as part of its compliance test program, and found that eight of them exceeded the 18 candela maximum at test points between 5.1 and 8.6 U. (NHTSA File NCI 3027). At the conclusion of NHTSA's investigation, Hella filed a petition for a determination that any noncompliance with Standard No. 108 be deemed inconsequential as it relates to motor vehicle safety. Hella supported its petition with the following four arguments:

"1. The subject rear combination lamps were designed to conform to FMVSS 108." As part of this argument, Hella noted that when the bulbs were installed on vehicles, due to long leads the actual voltage at which the lamps were operated would be less than the laboratory test voltage, and that the actual candela output would be less than demonstrated in NHTSA's tests. According to Hella, most of the bulbs were used on tractor trailers.

"2. The excess taillamp values above the horizontal do not compromise motor vehicle safety." Hella submitted that "Industry experience and supporting studies have established that the human eye, in the vast majority of cases, cannot detect a change in luminescence unless it is more than a 25 percent increase or decrease (SAE Recommended Practice J576, footnote 1). Of the eight lamps tested that exceeded the maximum intensity, one exceeded this maximum by 3.6 candela (20 percent), one by 1.5 candela (8.3 percent) and the remainder by less than 1.3 candela (7.2 percent)."

"3. The luminous intensity does not present a safety hazard because of glare." Hella argued that NHTSA pointed out in Docket 78-08 Notice 2, amending FMVSS 108, that the "current ratio of candlepower output by stop and tail lamps in combination lamps [must] be maintained at test points above the horizontal and extended to test points below the horizontal to minimize problems of glare." (44 FR 75385). In that rulemaking, the petitioner, Truck Safety Equipment Institute, had argued that "there must be countless driving situations everyday where the following driver is exposed to lamp candlepower (cp) outputs from approximately 15 cp to 22 cp without any evidence of hazardous driving conditions because of glare."

"4. The record confirms that the subject noncompliance presents no threat to motor vehicle safety." Hella is not aware of any complaints, accidents or injuries related to the subject products' exceeding the maximum limit of 18 candlepower for the taillamp function on or above the horizontal.

One comment was received on the petition from "An Industry Engineer" who has been "in the vehicle lighting industry for over 20 years." As an employee for a competitor of Hella, the commenter chose to remain anonymous. The comment addressed the following issues. First, the size of the affected population; according to "former employees of Hella" the company had sold "60 to 80% more units" than the 109,000 reported. Second, whether the lamps were designed to conform to the

standard; the commenter felt that a design placing the taillamp filament below the optical center of the lamp "is unavoidably going to direct hot spots above the horizontal, which is easily checked", and controlled. Third, whether the excess taillamp values compromise motor vehicle safety; the stoplamp-to-taillamp ratios "are destroyed when the taillamp reaches levels as in the Hella lamp." Fourth, whether the noncompliance creates glare; the allowable U.S. limit of 18 cd is 50% higher than that of Europe, and the noncompliance extends to "virtually their entire production for 16 months." finally, the commenter states that the grant of Hella's petition would set a *de facto* higher minimum standard of performance, making it more difficult in the event of future noncompliance to enforce the minimum actually specified in the standard.

Hella responded to the agency concerning the anonymous letter. It agreed that the location of the filament directs the light above the horizontal, but stated that this in itself does not necessarily cause excess values. Hella does not believe that glare is an issue, given the higher candlepower allowable for stoplamps and headlamps. The excessive readings appear in "a small angular aperture" and not over the entire lens surface. The excess is 20 percent or less than prescribed by the standard, and not detectable to the naked eye. Further, the stoplamp-to-taillamp ratios are maintained, even with the noncompliance. Hella also distinguished the European standard from the U.S. one, the European one lacking a requirement for a minimum lighted area of the lens surface, unlike the U.S. one. Finally, the problem that occurred was not one of design, but one of manufacturing tolerances.

The agency has carefully considered the petition, and the arguments for and against granting it. In the past, the agency has granted similar petitions for inconsequential noncompliance regarding the light output specification of FMVSS 108, (*e.g.*, a petition from Ford Motor Company regarding partially obstructed center high mounted stop lamps (52 FR 48789) and a petition from Chrysler Corporation regarding an inability to meet minimum back-up lamp photometrics (52 FR 17499)).

The agency has also considered information indicating that a reduction of approximately 25 percent in luminous intensity is requied before the human eye can detect the difference between two lamps. Of the noncompliant lamps tested, the greatest disparity reported between a compliant lamp and a noncompliant lamp was 3.6 cd, which is a 20 percent higher luminous intensity than compliant lamps. According to the Society of Automotive Engineers' Recommended Practice—SAE J576, this differential can not be detected by the human eye. In addition, a recent, agency-sponsored study indicates that real-world voltages at truck and trailer lamp sites are typically lower than the required 14.0 volt compliance test voltage. According to data collected by the Allen Corporation, only 4 of 542 tested trucks and trailers (0.7 percent) had tail and stop lamp voltages above 13.5 volts, and the highest recorded voltage was 13.78 volts. Thus, any "excessive" cd values would be reduced upon installation, and even further reduced as the lamp aged.

In addition to the noncompliant tail lamp results, further NHTSA testing found that 2 of 12 tested lamps failed to meet the required stoplamp-to-taillamp intensity ratio of 1:5 for a single test point, 5U–V. However, these failures only occurred at test point 5U–V and the intensity ratios for all other test points in the vicinity of 5U–V exceeded the 1:5 intensity ratio requirement. Thus, as with the noncompliant taillamp results, the noncompliances were confined to a very small area of the lamp. Further, both types of noncompliances were confined to very narrow zones (¼ degree) that typically project above the heads of most following drivers (5.0 to 8.6 degrees). Thus, any "glare" or "mistaken identify" problems would be extremely rare and quite momentary, if detectable at all.

In consideration of the foregoing, NHTSA finds that the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted. The agency wishes to make clear that its finding of inconsequential noncompliace applies to the particulars of this petition only, and the decision should not be interpreted as condoning noncompliances from the performance aspects of this or any other standard.

Authority: In U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: August 30, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90–21315 Filed 9–11–90; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 6, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0710

Form number: IRS Forms 5500 and 5500–C/R, Schedule B (Form 5500), Schedule E (Form 5500), and Schedule P (Form 5500)

Type of review: Revision

Title: Annual Return/Report of Employee Benefit Plan, Return/Report of Employee Benefit Plan and Associated Schedules

Description: These forms are annual information returns filed by employee benefit plans. The IRS uses this data to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.

Respondents: Businesses or other for-profit, Small businesses or organizations

Estimated number of respondents/recordkeepers: 901,400 Estimated burden hours per responsent/recordkeeper:

	Recordkeeping		Learning about the form		Preparing the form		Sending time
	Hrs.	Min.	Hrs.	Min.	Hrs.	Min.	Min.
Form 5500 (initial filers)	86	34	8	51	13	26	48
Form 5500 (all other)	80	50	8	51	13	21	48
Schedule A	17	28		28	1	42	16

	Recordkeeping		Learning about the form		Preparing the form		Sending time
	Hrs.	Min.	Hrs.	Min.	Hrs.	Min.	Min.
Schedule B	34	12	2	23	3	3	
Schedule C	5	16		18		23	
Schedule E (loans)	9	49	1	41	1	55	
Schedule F (ESOP)	1	26		12		14	
Schedule P	1	40		30		32	
Schedule SSA	6	42		12		19	
* * *	*		*		*		
Form 5500–C (initial filers)	54	46	7	29	10	34	32
Form 5500–C (all other)	44	58	7	29	10	25	32
Form 5500–R (initial filers)	21	31	3	37	5	59	32
Form 5500–R (all other)	11	43	3	37	5	50	32
Schedule A	17	28		28	1	42	16
Schedule B	34	12	2	23	3	3	
Schedule E (loans)	9	49	1	41	1	55	
Schedule E (ESOP)	1	26		12		14	
Schedule P	1	40		30		32	
Schedule SSA	6	42		12		19	

Frequency of response: Annually
Estimated total reporting/recordkeeping burden: 32,319,444 hours
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503,

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90–21311 Filed 9–11–90; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF VETERANS AFFAIRS

Career Development Committee; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Career Development Committee, authorized by 38 U.S.C. 4101, will be held in the Pacific Room of the Hanalei Hotel, 2270 Hotel Circle North, San Diego, CA, October 22 through 23, 1990, starting at 8 a.m., October 22. The meeting will be for the purpose of scientific review of applications for appointment to the Career Development Program in the Department of Veterans Affairs. The committee advises the Director, Medical Research Service on selection and appointment of Associate Investigators, Research Associates, and Senior Medical Investigators.

The meeting will be open to the public up to the seating capacity of the room from 8 a.m. to 8:30 a.m. on October 22, 1990, to discuss the general status of the program. Because of the limited seating capacity of the room, those who plan to attend should contact Mr. David D. Thomas, Executive Secretary of the Career Development Committee (151J), Department of Veterans Affairs Central Office, Washington, DC 20420 (202–233–2317) prior to October 15, 1990. The meeting will be closed from 8:30 a.m. to 5 p.m., on October 22, and from 8 a.m. to 5 p.m. on October 23, for consideration of individual applications for positions in the Career Development Program. This necessarily requires examination of personnel files and discussion and evaluation of the qualifications, competence, and potential of the candidates, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, closure of this portion of the meeting is permitted by section 10(d) of Public Law 92–463 as amended, in accordance with subsection (c)(6), 5 U.S.C. 552b.

Minutes of the meeting and rosters of the committee members may be obtained from David D. Thomas, Chief, Career Development Program, Medical Research Service (142A3), Department of Veterans Affairs, Washington, DC 20420 (phone 202–233–2317).

Dated: August 30, 1990.

By direction of the Secretary.

Laurence M Christman,

Executive Assistant.

[FR Doc. 90–21441 Filed 9–11–90; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Environmental Hazards; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463, section 10(a)(2), that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held at the Department of Veterans Affairs, Lafayette Building, 811 Vermont Avenue, NW., Washington, DC 20420, room 442, on October 30–31, 1990. The Committee's discussions will include a review of the scientific literature relating to the health effects of exposure to a herbicide containing dioxin and to ionizing radiation.

The meeting will convene at 9 a.m. on October 30th and at 8:30 a.m. on October 31st in room 442. This meeting will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mr. Frederic L. Conway, Department of Veterans Affairs Central Office (phone 202/233–8019) prior to October 15, 1990.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Frederic L. Conway, Deputy Assistant General Counsel (026B), room 1075B, Department of Veterans Affairs Central Office. Submitted material must be received at least 5 days prior to the meeting. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Dated: September 6, 1990.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 90–21442 Filed 9–11–90; 8:45 am]

BILLING CODE 8320–01–M

Advisory Commission on the Future Structure of Veterans Health Care; Meeting

The Department of Veterans Affairs gives notice under the Public Law 92–463 that a meeting of the Commission on the Future Structure of Veterans Health Care will be held on October 10 and 11, 1990. The session will be held between 8:30 a.m. and 5 p.m. on October 10, and 8:30 a.m. and 1 p.m. on October 11, at the Back Bay Hilton, Westminster Room (2nd Floor), 40 Dalton Street, Boston, Massachusetts. The Commission's purpose is to review the missions and programs of the VA's health care facilities to determine whether changes in services, programs, or missions at individual facilities are needed, with a focus on providing care to eligible veterans in the decade 2000-2010. The agenda for the meeting will include presentations to the Commission by various VA and non-VA officials as well as working sessions for the Commissioners to discuss, study, and analyze specific VA health care facilities within the area. The meeting will be open to the public up to the seating capacity of the room. Interested persons may file statements with the Commission, or may offer views during the public forum session. Statements, if in written form, may be filed before or within 10 days after the close of the meeting.

To assure an opportunity to present a statement before the Commission, interested persons must notify Mr. Bob Moran, Commission on the Future Structure of Veterans Health Care, Techworld Plaza, 800 K Street, NW., P.O. Box 88, Washington, DC 20001, telephone (202) 633–7079, no later than September 28, 1990. Persons wanting additional information regarding the meeting may also contact Mr. Moran.

Dated: September 6, 1990.

By Direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 90–21443 Filed 9–11–90; 8:45 am]

BILLING CODE 8320–01–M

Privacy Act of 1974; Proposed Amendment of System Notice; Additional Routine Use Statement

Notice is hereby given that the Department of Veterans Affairs (VA) is considering adding new routine use statements to two systems of records. The systems are entitled, "Individuals Submitting Invoices/Vouchers For Payment-VA" (13VA047) which is set forth on pages 772 and 773 of the **Federal Register** publication, "Privacy Act Issuances, 1987 Compilation, Volume V" and "Patient Medical Records-VA" (24VA136) which is set forth on pages 780–782 and amended at 53 FR 49818, December 9, 1988, and 55 FR 5112–5113, February 13, 1990.

The Department of Health and Human Services (HHS) Office of Inspector General (OIG), in cooperation with the VA OIG, plans to initiate a computer matching program to identify improper duplicate payments for medical care made by Medicare fiscal intermediaries where VA was responsible for the payment. The match will compare records of VA patients who were authorized by VA to obtain medical services from non-VA health care facilities and payment files for those services and Medicare payment files of Part A beneficiaries. The purpose of the match is for HHS to identify duplicate payments and initiate recovery of identified overpayments and, as the situation may warrant, initiate fraud investigations. HHS also may seek reimbursement from VA for those services which were authorized by VA and for which no payment, or partial payment, was made by VA.

Information from automated records of inpatient episodes of non-VA care will be disclosed to HHS. The automated record does not include the name of the hospital where treatment was provided. The information to be disclosed includes patient name, Social Security number, date of birth, dates of admission and discharge, diagnostic, surgical and procedures codes, and state and county of residence and zip code. The information is needed by HHS to identify the patient and the specific episode of treatment and will be compared to the Medicare payment files to determine if a payment has been made on behalf of the beneficiary for an episode of care with similar dates of treatment. If a payment has been made by Medicare, HHS will identify the facility where the treatment was provided, the services for which payment was made, and the date and amount of payment. VA records, automated and paper, will be searched to determine if this represents a duplicate payment for the same episode of care. The records may be examined also to determine if the episode of care represents a period of treatment that was authorized by VA and for which no payment, or partial payment, was made.

Patient records that are protected by 38 U.S.C. 4132 will not be disclosed to HHS. These are records that pertain to treatment for drug or alcohol abuse, infection with the human immunodeficiency virus or sickel cell anemia. Records that include information pertaining to this type of treatment may be disclosed only with the written consent of the patient or under the limited disclosure provisions specified in section 4132. Disclosures for purposes such as this match are not provided for in section 4132.

In order to disclose the necessary information, new routine uses must be added to the two systems of records. VA has determined that release of information for these purposes is necessary and is a proper use of information in these systems of records and that specific routine uses for the disclosure of this information is appropriate.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed routine uses to the Secretary, Department of Veterans Affairs (271A), 810 Vermont Avenue, NW., Washington, DC 20420. All relevant material received before October 12, 1990, will be considered. All written comments received will be available for public inspection only in Room 132 of the above address only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until October 22, 1990.

If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by VA, the routine uses in the systems are effective October 12, 1990.

Approved: September 4, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Notice of Systems of Records

1. In the system identified as 13VA047, "Individuals Submitting Invoices/Vouchers for Payment-VA" appearing on pages 772–773 of the **Federal Register** publication, "Privacy Act Issuances, 1987 Compilation, Volume V," the following routine use is added:

13VA047

SYSTEM NAME:

Individuals Submitting Invoices/Vouchers For Payment-VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 38 U.S.C. 4132, i.e., medical treatment information related to drug

abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a Routine Use unless there is also specific statutory authority permitting disclosure.

* * * * *

10. Relevant information (excluding medical treatment information related to drug or alcohol abuse, infection with the human immunodeficiency virus or sickle cell anemia) may be disclosed to the Department of Health and Human Services (HHS) for the purpose of identifying improper duplicate payments made by Medicare fiscal intermediaries where VA authorized and was responsible for payment for medical services obtained at non-VA health care facilities. The purpose of the review is for HHS to identify duplicate payments and initiate recovery of identified overpayments and, where warranted, initiate fraud investigations, or, to seek reimbursement from VA for those services which were authorized by VA and for which no payment, or partial payment, was made by VA. HHS will provide information to identify the patient to include the patient name, address, Social Security number, date of birth, and information related to the period of medical treatment for which payment was made by Medicare to include the name and address of the hospital, the admission and discharge dates, the services for which payment was made, and the dates and amounts of payment. Information disclosed from this system of records will be limited to that information that is necessary to confirm or disprove an inappropriate payment by Medicare. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

2. In the system identified as 24VA136, "Patient Medical Records-VA" appearing on pages 780–782 of the **Federal Register** publication, "Privacy Act Issuances, 1987 Compilation, Volume V," and amended at 53 FR 49818, December 9, 1988, and 55 FR 5112–5113, February 13, 1990, the following routine use is added:

24VA136

SYSTEM NAME:

Patient Medical Records-VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 38 U.S.C. 4132, i.e., medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a Routine Use unless there is also specific statutory authority permitting disclosure.

* * * * *

30. Relevant information (excluding medical treatment information related to drug or alcohol abuse, infection with the human immunodeficiency virus or sickle cell anemia) may be disclosed to the Department of Health and Human Services (HHS) for the purpose of identifying improper duplicate payments made by Medicare fiscal intermediaries where VA authorized and was responsible for payment for medical services obtained at non-VA health care facilities. The purpose of the review is for HHS to identify duplicate payments and initiate recovery of identified overpayments and, where warranted, initiate fraud investigations, or, to seek reimbursement from VA for those services which were authorized by VA and for which no payment, or partial payment, was made by VA. The information to be disclosed to HHS for those patients authorized by VA to obtain medical services from non-VA health care facilities includes patient identifying information to include name, address, Social Security number, and date of birth, and dates of admission and discharge, diagnostic, surgical and procedures codes, and state and county of residence and zip code. These records may also be disclosed as part of an ongoing computer matching program to accomplish these purposes.

[FR Doc. 90–21444 Filed 9–11–90; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 55, No. 177
Wednesday, September 12, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

Child and Adult Care Food Program: Adult Meal Pattern

Correction

In proposal rule document 90-20104 beginning on page 34935 in the issue of Monday, August 27, 1990, make the following corrections:

1. On page 34935, in the third column, under "**Review of Nutritional Need**", in the second paragraph, in the fourth line from the bottom "than" should read "then".

2. On page 34936, in the first column, in the first paragraph, in the tenth line "survey is anicipated" should read "survey it is anticipated".

3. On the same page, in the same column, in the same paragraph, in the fourth line from the bottom "discused" should read "discussed".

4. On the same page, in the third column, in item 2.a., in the third line "an equivalent of" should read "an equivalent serving of".

5. On the same page, in the same column, in item 2.d., in the fourth line add a comma after "children".

6. On the same page, in the same column, in item 2.e., in the second line "amended" was misspelled.

7. On page 34937, in the second column, after line five add the following paragraph: "j. Paragraph (p) is revised."

§ 226.20 [Corrected]

8. On page 34937, in § 226.20(c)(1), in the "Breakfast" table, in the first column (Food components), under "Bread and Bread Alternates", in the second entry "muffins" was misspelled.

9. On the same page, in § 226.20(c)(2), in the "Lunch" table, in the first column (Food components), under "Bread and Bread Alternates", in the third entry "pasta" was misspelled.

10. On the same page, in § 226.20(c)(2), in the "Lunch" table, in the fifth column (Adult participants), in the last entry "1 oz[8] 50%" should read "1 oz[8] = 50%".

11. On page 34938, in § 226.20(c)(3), in the "Supper" table, in footnote seven "most" should read "meat".

12. On the same page, in § 226.20(c)(3), in the "Supper" table, in footnote eight, in the second line, add ", poultry or fish" after "lean meat".

13. On the same page, in § 226.20(c)(4), in the "Supplemental Food" table, in the third column the caption "Children ages 3 and 5" should read "Children ages 3 through 5".

14. On the same page, in § 226.20(c)(4), in the "Supplemental Food" table, in the fourth column the caption "Children ages 6 and 12 [1]" should read "Children ages 6 through 12 [1]".

15. On the same page, in § 226.20(c)(4), in the "Supplemental Food" table, in the first column (Food components), under "Vegetable(s) and/or Fruit(s)", in the second entry, in the first line "vegetables at fruit" should read "vegetables or fruit".

16. On the same page, in § 226.20(c)(4), in the "Supplemental Food" table, in the first column (Food components), the caption "Bread and Bread Alternate" should read "Bread and Bread Alternates".

17. On page 34939, in § 226.20(p)(2), in the second line "not affected" should read "not be affected".

BILLING CODE 1505-01-D

COMMODITY FUTURES TRADING COMMISSION

Authorization of the National Futures Association to Implement Phases II and III of a Pilot Program for the Direct Electronic Entry of Registration Data With Respect to Applicants for Registration as Associated Persons of Specified Registrants

Correction

In notice document 90-20639 beginning on page 35925 in the issue of Tuesday, September 4, 1990, make the following correction:

On page 35930, in the third column, in footnote 41, in the ninth line, insert the following after "Commission": ", and shall be the official record of the Commission".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD-FRL-3700]

Preparation, Adoption, and Submittal of State Implementation Plans; Methods for Measurement of PM Emissions From Stationary Sources

Correction

In the issue of Monday, June 18, 1990, on page 24689, in the correction to rule document 90-7603, the correction designated 11 should appear as follows:

Appendix M to Part 51—[Corrected]

11. On page 14270, in the third column, under the paragraph designated 5.3.1.1, the second equation should read as follows:

$$(Stk_{50})^{1/2} = \left[\frac{4\, Q_{cyc}\, (D_{50})^3}{9\, \pi\, \mu_{cyc}\, (d_{cyc})^3} \right]^{1/2}$$

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

29 CFR Part 29

Labor Standards for the Registration of Apprenticeship Programs

Correction

In proposed rule document 90-19988 beginning on page 34868 in the issue of Friday, August 24, 1990, make the following corrections:

1. On page 34868, in the first column, the first line of the **SUMMARY** should read "The Employment and Training".

2. On the same page, in the second column, at the end of the seventh from the last line, "The" should read "This".

§ 29.2 [Corrected]

3. On page 34870, in the second column, in § 29.2(b), in the fourth line, "apprenticeship" should read "apprenticeable".

§ 29.3 [Corrected]

4. On the same page, in the third column, in the heading of § 29.3, "apprenticeship" should read "apprenticeable".

§ 29.3 [Corrected]

5. On page 34871, in the first column, in § 29.3(d), at the beginning of the 13th line, "the" should be omitted.

§ 29.5 [Corrected]

6. On page 34872, in the third column, in § 29.5(g), in the third line, "is found to" should read "is found not to".

§ 29.5 [Corrected]

7. On the same page, in the same column, in § 29.5(g) introductory text, in the 22nd line, "thirty (30) days" should read "thirty (30) calendar days".

§ 29.5 [Corrected]

8. On page 34873, in the first column, in § 29.5(g)(7), in the 11th line, "thirty (30) days" should read "thirty (30) calendar days".

§ 29.5 [Corrected]

9. On the same page, in the second column, in § 29.5(h)(3)(iii), at the end of the second line, "register" should read "deregister".

§ 29.7 [Corrected]

10. On page 34874, in the second column, in § 29.7(c), in the 15th line, "longer" was misspelled.

§ 29.8 [Corrected]

11. On page 34874, in the second column, in § 29.8, in the 19th line, "administered" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 24344; Amendment No. 25-72]

RIN 2120-AA47

Special Review: Transport Category Airplane Airworthiness Standards

Correction

In rule document 90-16852 beginning on page 29756 in the issue of Friday, July 20, 1990, make the following corrections:

§ 25.149 [Corrected]

1. On page 29774, in the second column, in § 25.149(b), in the first line, "V_{mc}" should read "V_{MC}".

2. On the same page, in the second column, in § 25.149(e), in the first line, "V_{mcg}," should read "V_{MCG}," each time they appear.

3. On the same page, in § 25.149(e), in the 3rd column, in the 6th line, "V_{mcg}," should read "V_{MCG},"; and in the 15th line "V_{mcg}" should read "V_{MCG}".

4. On the same page, in the third column, in § 25.149(f), in the first line, "V_{mcl}," should read "V_{MCL},"; and in the last line,"V_{mcl}" should read "V_{MCL}" .

5. On the same page, in the same column, in § 25.149(g), in the 2nd line, "$V_{mcl\text{-}2}$," should read "$V_{MCL\text{-}2}$,"; and in the 11th line "$V_{mcl\text{-}2}$" should read "$V_{MCL\text{-}2}$".

§ 25.177 [Corrected]

6. On the same page, in the same column, in § 25.177(c), the third sentence should read "Compliance with this paragraph must be demonstrated for all landing gear and flap positions and symmetrical power conditions at speeds from 1.2 V_{S1} to V_{FE}, V_{LE}, or V_{FC}/M_{FC}, as appropriate."

7. On page 29775, in the first column, in § 25.177(d), in the third line, "V_{mo}/M_{mo} and V_{fc}/M_{fc}" should read "V_{MO}/M_{MO} and V_{FC}/M_{FC}".

§ 25.181 [Corrected]

8. On the same page, in the same column, in amendatory instruction 12, "1.2 V_s" should read "1.2 V_S".

§§ 25.331, 25.341, 25.343, 25.345, and 25.351 [Corrected]

9. On pages 29775 and 29776, a portion of the text contained a number of errors. As corrected, the text beginning with amendatory instruction 17, on page 29775, in the second column, and continuing through amendatory intruction 22 on page 29776, in the first column should read as follows:

§ 25.331 [Amended]

17. By amending § 25.331, paragraph(c)(2)(i), by removing the expression "A to D" following the word "Points" and inserting the expression "A_1 to D_1" in its place and, paragraph (c)(2)(ii), by removing the expression "A to D" following the word "Points" and inserting the expression. "A_2 to D_2" in its place.

18. By amending § 25.341, by revising paragraph (b)(1) as follows, and by redesignating existing paragraph (b)(3) as paragraph (c) and revising the text as follows:

§ 25.341 Gust loads.

* * * * *

(b) * * *

(1) The shape of the gust is

$$U = \frac{U_{de}}{2}\left(1-\cos\frac{2\pi s}{25C}\right)$$

where—

s = distance penetrated into gust (ft);
C = mean geometric chord of wing (ft); and
U_{de} = derived gust velocity referred to in paragraph (a) (fps).

(2) * * *

(c) In the absence of a more rational analysis, the gust load factors must be computed as follows:

$$n = 1 + \frac{K_g U_{de} V a}{498\ (W/S)}$$

where—

$$K_g = \frac{0.88\mu_g}{5.3+\mu_g} = \text{gust alleviation factor;}$$

$$\mu_g = \frac{2(W/S)}{\rho \bar{C} a_g} = \text{airplane mass ratio:}$$

U_{de} = derived gust velocities referred to in paragraph (a) (fps);
ρ = density of air (slugs cu. ft.);
W/S = wing loading (psf);
$\bar{C}$ = mean geometric chord (ft);
g = acceleration due to gravity (ft/sec²);
V = airplane equivalent speed (knots); and
a = slope of the airplane normal force coefficient curve C_{NA} per radian if the gust loads are applied to the wings and horizontal method. The wing lift curve slope C_{AL} per radian may be used when the gust load is applied to the wings only and the horizontal tail gust loads are treated as a separate condition.

§ 25.343 [Amended]

9. By amending § 25.343, paragraph (a), by removing the reference to § 25.1001 (h) and (i) and inserting a reference to § 25.1001 (e) and (f) in its place.

20. By amending § 25.345 by revising paragraph (c)(1) to read as follows:

§ 25.345 High lift devices.

* * * * *

(c) * * *

(1) Maneuvering to a positive limit load factor as prescribed in § 25.337(b); and

* * * * *

21. By amending § 25.351, by revising paragraph (b) as follows:

§ 25.351 Yawing conditions.

• • • • •

(b) *Lateral gusts.* The airplane is assumed to encounter derived gusts normal to the plane of symmetry while in unaccelerated flight. The derived gusts and airplane speeds corresponding to conditions B' through J' (in § 25.333(c)) (as determined by §§ 25.341 and 25.345(a)(2) or § 25.345(c)(2)) must be investigated. The shape of the gust must be as specified in § 25.341. In the absence of a rational investigation of the airplane's response to a gust, the gust loading on the vertical tail surfaces must be computed as follows:

$$L_t = \frac{K_{gt} U_{de} V a_t S_t}{498}$$

where—

L_t=vertical tail load (lbs.);

$$K_{gt} = \frac{0.88\mu_{gt}}{5.3+\mu_{gt}} = \text{gust alleviation factor;}$$

$$\mu_{gt} = \frac{2W}{\rho \bar{C}_t g a_t S_t}\left(\frac{K^2}{l_t}\right)_2 = \text{lateral mass ratio;}$$

U_{de}=derived gust velocity (fps);

ρ=air density (slugs/cu. ft.);

W=airplane weight (lbs.);

S_t=area of vertical tail (ft.^{2});

$\bar{C}_t$=mean geometric chord of vertical surface (ft.);

a_t=lift curve slope of vertical tail (per radian);

K=radius of gyration in yaw (ft).;

l_t=distance from airplane c.g. to lift center of vertical surface (ft.);

g=acceleration due to gravity (ft./sec.^{2}); and

V=airplane equivalent speed (knots).

22. By amending § 25.361 by revising paragraphs (a) introductory text, (a)(2) and (c) introductory text to read as follows:

BILLING CODE 1505-01-D

federal register

Wednesday
September 12, 1990

Part II

Department of Education

34 CFR Part 690

Pell Grant Program; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 690

Pell Grant Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Pell Grant Program regulations to clarify them, to make minor technical changes, and to implement statutory changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1986, the Consolidation Omnibus Budget Reconciliation Act of 1985 and the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1990.

DATES: Comments must be received on or before October 29, 1990.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Ms. Carney M. McCullough, Chief, Policy Section, Pell Grant Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue, SW (room 4318, Regional Office Building 3), Washington, DC 20202–5343.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Ms. Joyce R. Coates, Program Specialist, Policy Section, Pell Grant Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue, SW (room 4318, Regional Office Building 3), Washington, DC 20202–5343, Telephone number (202) 708–7888.

SUPPLEMENTARY INFORMATION: Several of these proposed changes in the Pell Grant Program regulations result from statutory changes mandated by Congress under the Higher Education Amendments of 1986 (Pub. L. 99–498) and the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272). Other proposed changes result from a review of current policies and procedures and are technical and intended to clarify existing policies and procedures. A summary of the significant proposed changes follows:

Section 690.2 General Definitions

The Secretary proposes to change the term used on the Student Aid Report (SAR) to designate a student's expected family contribution for the Pell Grant Program from Student Aid Index (SAI) to "Pell Grant Index" (PGI). The Secretary believes that since the Student Aid Index is only used for the Pell Grant Program, the term Pell Grant Index is a more accurate term. The Secretary also proposes to revise § 690.2 to provide that the definitions of terms relating to an institution's eligibility are now found in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600. The Secretary also proposes to revise the definition of Valid Student Aid Report (Valid SAR) to clarify the requirement for the Electronic Data Exchange that institutions need only obtain signatures by an applicant, his or her spouse, and, if the applicant is a dependent student, one of the applicant's parents. Under current regulations, a Valid SAR for the Electronic Data Exchange (Electronic SAR) is required to contain the signatures of both of the applicant's parents. The Secretary is also proposing to change the term Pell Grant Electronic Data Exchange to Electronic Data Exchange, to reflect the expanded use of the electronic exchange system by all programs administered under title IV of the HEA (title IV, HEA programs).

Section 690.3 Definitions of Payment Period and Section 690.63 Calculation of a Pell Grant for a Payment Period and Section 690.64 Calculation of a Pell Grant for a Payment Period Which Occurs in Two Award Years

These proposed regulations would modify one of the definitions of "payment period" to reflect the fact that one institution may have both term and nonterm programs. These proposed regulations would clarify that the definition of "payment period" is based upon whether a program is term-based or nonterm and not whether the institution itself uses either term or nonterm measurements.

Section 690.75 Determination of Eligibility for Payment

The Secretary is proposing to revise § 690.75 to clarify the requirement for an institution to pay a Pell Grant award to an eligible student who is enrolled in an eligible program only after the student has completed the required credit hours for which he or she has been paid, if the student is enrolled in an eligible program that is measured in credit hours and that does not have academic terms. This proposed revision merely codifies the Secretary's long-standing practice.

The Secretary also proposes to amend § 690.75 to incorporate the provisions in the Higher Education Amendments of 1986 which permit an institution to pay Pell Grant awards to certain eligible students who are enrolled in an eligible program on a less-than-half-time basis. Section 411(b) of the HEA provides that a student enrolled on a less-than-half-time basis may receive Pell Grant funds for award year 1989–90 if sufficient appropriations are available and the student's PGI is less than or equal to zero; for 1990–91 if the student's PGI is less than or equal to zero, or for award year 1991–92, if the student's PGI is less than or equal to $200. However, the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1990 (Pub. L. 101–166) rescinded the eligibility of less-than-half-time students for the 1990–91 award year and provided that for the 1989–90 award year, a student who is attending on a less-than-half-time basis is eligible to receive a Pell Grant award for a period of enrollment beginning on or after January 1, 1990, only if he or she received a Pell Grant for a payment period beginning before January 1, 1990 based on an enrollment status of less than half-time.

Section 690.76 Frequency of Payment

The Secretary is proposing to revise § 690.76(b) to make it clear that an institution may pay funds in one lump sum for all the prior payment periods for which the student was an eligible student within that award year based on the coursework completed by the student.

Section 690.77 Initial Disbursement of a Pell Grant in an Award Year Without a Valid SAR

The Secretary proposes to amend this section to clarify that in order for an institution to make an initial disbursement without a valid SAR, the institution must receive the PGI either directly from the Secretary or receive the PGI produced by the Secretary from an organization that has a contract to receive processed application data from the Secretary. As a result of changes to the student aid delivery system for the 1990–91 award year, several institutions requested that this provision be clarified. In the 1989–90 award year, the organizations that had contracts to receive processed application data from the Secretary were provided with a common set of edits and computation procedures. These organizations computed the PGI and transmitted the PGI, as well as the application data, to the Secretary. The Secretary issued the SAR containing the PGI provided to the student. Beginning with the 1990–91 award year, the organizations that have

contracts to receive processed application data from the Secretary do not receive the edits and computation procedures necessary to compute the PGI. The Secretary computes the PGI and transmits the computation back to the organization. The organization then issues the SAR to the student. The Secretary always intended that an institution's ability to make an initial disbursement without a valid SAR be based upon the receipt of a PGI that is computed by the Secretary.

Section 690.78 Method of Disbursement—By Check or Credit to a Student's Account

The Secretary is proposing to revise § 690.78(d)(3) to clarify that an institution that intends to pay a student directly may credit the student's account only for any outstanding charges for tuition and fees and room and board for an award year if the student has not picked up the check within 15 days after the end of the student's enrollment in that award year.

Section 690.79 Recovery of Overpayments

The Secretary proposes to amend § 690.79(c) to reflect the changes made to the HEA by the Consolidated Omnibus Budget Reconciliation Act of 1985 and the Higher Education Amendments of 1986. Under these changes, a student is ineligible for further title IV, HEA program assistance for attendance at any institution, if the student received an overpayment at an institution, that institution is not liable for that overpayment, and the institution referred the student to the Secretary. The student remains ineligible until the student repays the overpayment or until the Secretary determines that the overpayment has been resolved.

Section 690.83 Submission of Reports

The cash flow process in the Pell Grant Program has impacted an institution's ability to make Pell Grant disbursements to its students. The requirements in this section are proposed to better control the Pell Grant cash flow process.

The Secretary proposes to change the term "Payment Document" to "Payment Voucher." Also, the Secretary is proposing to change the deadline date for submission of all SAR Payment Vouchers (or the equivalent as defined by the Secretary) from December 31 to September 30 following the end of an award year. The Secretary believes that increased automated data exchange participation in the Pell Grant Program has reduced the need for such an extensive period of time subsequent to the award year in which to reconcile institutional records for the Pell Grant Program and believes that changing the deadline date for the submission of all SAR Payment Vouchers (or equivalent as defined by the Secretary) to September 30 provides an institution with a sufficient period of time to conduct its reconciliations.

The Secretary proposes to require an institution to submit its Payment Vouchers during the institution's next required reporting period for those students whose Pell Grant awards or payments have changed as a result of changes such as, enrollment status, transferring, dropping out, or the loss of eligibility for future payment. The Secretary believes that the requirement is necessary to ensure that an institution's Pell Grant allocations are both adequate and accurate to serve its students' needs. Additionally, this requirement will ensure that Federal funds would no longer remain at an institution when its students do not need the funds. Generally, an allocation will only be made to an institution to support documented Pell Grant payments to students, and the allocation will be available for the institution by the beginning of the month in which the payment will be made. However, the allocation to an institution will be prorated to take into account the expected normal term-to-term attrition in student attendance and changes in student eligibility for reasons such as a change in enrollment status, or failure to maintain satisfactory progress. Institutions that fail to submit required reports or that file untimely or incomplete reports, will have their Pell Grant allocation reduced to an amount to be determined by the Secretary. This will allow the Secretary to use these funds for those institutions that comply with the Secretary's reporting and fund administration requirements.

The Secretary proposes to fine per violation institutions that fail to comply with the requirement to report during each required reporting period and to fine per violation institutions that do not submit the Payment Vouchers (or equivalent as defined by the Secretary) during the next required reporting period for each reporting period that such institutions fail to submit such Payment Vouchers for each student whose award or payments have changed.

Section 690.84 Audit and Examination

The Secretary proposes to remove this section because these provisions are contained in § 668.23 of the Student Assistance General Provisions regulations.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The regulations would not have a significant economic impact on the small entities affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 690.77 and 690.83 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attention Daniel J. Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4318, Regional Office Building-3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would

require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 690

Administrative practice and procedure, Education, Education of disadvantaged, Grant programs—education, student aid.

(Catalog of Federal Domestic Assistance Number: 84.063 Pell Grant Program)

Dated: July 20, 1990.

Lauro F. Cavazos,

Secretary of Education.

The Secretary proposes to amend part 690 of title 34 of the Code of Federal Regulations as follows:

PART 690—PELL GRANT PROGRAM

1. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a through 1070a–6, unless otherwise noted.

2. Section 690.2 is amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c) respectively, and by adding a new paragraph (a) to read as follows:

§ 690.2 General definitions.

(a) Definitions of the following terms used in this part are found in subpart A of the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Accredited
Clock hour
Educational program
Eligible institution
One-year training program
Program of study by correspondence
Proprietary institution of higher education
Postsecondary vocational institution
Recognized equivalent of high school diploma
Secretary
Six-month training program

* * * * *

§ 690.2 [Amended]

3. In § 690.2, redesignated paragraph (b) is amended by removing the definitions for the terms *Clock hour, One-year training program, Proprietary institution of higher education, Postsecondary vocational institutional, Recognized equivalent of a high school diploma, Secretary,* and *Six-month training program.*

§ 690.2 [Amended]

4. In § 690.2, redesignated paragraph (c) is amended by removing the term "Pell Electronic Data Exchange", and adding in its place the term "Electronic Data Exchange"; by removing the term "Student Aid Index", and adding in its place the term "Pell Grant Index"; by redesignating paragraphs (a) and (b) as paragraphs (1) and (2), respectively, in the definition of "Valid Student Aid Report"; and by removing in redesignated paragraph (2) the words "Pell Grant"; and by removing in redesignated paragraph (2) the words "the applicant's parents" and adding, in their place, the words "one of the applicant's parents"; and by revising the definition of "Institution of higher education" to read as follows:

§ 690.2 General definitions.

* * * * *

(c) * * *

Institution of higher education (Institution): An institution of higher education, or a proprietary institution of higher education, or a postsecondary vocational institution, as defined in 34 CFR part 600.

* * * * *

§ 690.3 [Amended]

5. In § 690.3, paragraphs (a), (a)(1), (a)(2) and (b) are amended by removing the words "an institution", and adding in their place, the words "an eligible program."

§ 690.7 [Amended]

6. In § 690.7, paragraph (a)(1)(i) is amended by removing the term "34 CFR part 668, subpart A" and adding, in its place, the term "34 CFR part 600".

§ 690.13 [Amended]

7. Section 690.13 is amended by removing the words "student aid index" and adding, in their place, the words "Pell Grant Index".

§ 690.61 [Amended]

8. In § 690.61, paragraph (b)(2) is amended by removing "§ 680.60" and adding, in its place, "668.60".

§ 690.63 [Amended]

9. In § 690.63, paragraphs (a) and (c) are amended by removing the words "At an institution", and adding, in their place, the words "In an eligible program"; paragraphs (a)(3)(i) and (a)(3)(ii) are amended by removing the words "of an institution", and adding, in their place, the words "in an eligible program."

* * * * *

10. Section 690.64 is amended by revising paragraphs (c)(1) and (c)(2) to read as follows:

§ 690.64 Calculation of a Pell Grant for a payment period which occurs in two award years.

* * * * *

(c)(1) If an eligible program uses academic terms and offers a series of mini-sessions which occurs in two award years, the combined sessions must be treated as one term. A student may not receive more than one term's award for completing any combination of these mini-sessions.

(2) For such mini-sessions, an institution that uses academic terms in an eligible program shall determine the student's enrollment status for the entire term. That enrollment status shall be based upon—

* * * * *

11. Section 690.75 is amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

§ 690.75 Determination of eligibility for payment.

(a) * * *

(2)(i) Is enrolled as at least a half-time undergraduate student; or

(ii) To the extent not otherwise provided for in the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1990, is enrolled as an undergraduate student on a less-than-half-time basis—

(A) For award year 1989–90 if the PGI for such student is less than or equal to zero; or

(B) For award year 1991–92, if the PGI for such student is less than or equal to $200; and

(3)(i) Has completed the required clock hours for which he or she has been paid a Pell Grant, if the student is enrolled in an eligible program that is measured in clock hours; or

(ii) Has completed the required credit hours for which he or she has been paid a Pell Grant, if the student is enrolled in an eligible program that is measured in credit hours and that does not have academic terms.

* * * * *

12. Section 690.76 is amended by revising paragraph (b) to read as follows:

§ 690.76 Frequency of payment.

* * * * *

(b) The institution may pay funds in one lump sum for all the prior payment periods for which the student was an eligible student within the award year. The student's enrollment status must be determined according to work already completed.

* * * * *

13. Section 690.77 is amended by removing the term "SAI" each time it appears, and adding, in its place, the term "PGI"; and by revising paragraph (a)(3) and the introductory text of paragraph (b) to read as follows:

§ 690.77 Initial disbursement of a Pell Grant in an award year without a valid SAR.

(a) * * *

(3)(i) Receives a PGI from the Secretary; or

(ii) Receives the PGI produced by the Secretary from an organization that has a contract to transmit application data to the Secretary.

(b) If an institution receives a student's application information and his or her PGI from the Secretary, or his or her PGI produced by the Secretary from an organization that has a contract to transmit application data to the Secretary, but the institution has documentation that indicates that the application information is inaccurate, the institution may make one disbursement within an award year of a student's Pell Grant before receiving the student's valid SAR if the institution—

* * * * *

14. Section 690.78 is amended by revising paragraph (d)(3) to read as follows:

§ 690.78 Method of disbursement—by check or credit to a student's account.

* * * * *

(d) * * *

(3) If the student has not picked up his or her payment at the end of the 15-day period, the institution may credit the student's account only for any outstanding charges for tuition and fees and room and board for the award year incurred by the student while he or she was eligible.

* * * * *

15. Section 690.79 is amended by revising paragraph (c) to read as follows:

§ 690.79 Recovery of overpayments.

* * * * *

(c) If an institution refers a student who received an overpayment for which it is not liable to the Secretary for recovery, the student remains ineligible for further title IV, HEA program assistance for attendance at any institution until the student repays the overpayment or the Secretary determines the overpayment has been resolved.

* * * * *

16. In § 690.83, paragraph (a) is amended by removing the words "Payment Documents" and "December 31" and adding in their place, respectively, the words "Payment Vouchers" and "September 30"; and by adding new paragraphs (c) and (d) and revising the authority citation to read as follows:

§ 690.83 Submission of reports.

* * * * *

(c) An institution shall submit to the Secretary a SAR Payment Voucher (or the equivalent as defined by the Secretary) for each student whose Pell Grant award has changed as a result of a change in enrollment status, a change in the cost of attendance, or a change in the student's eligibility in the next reporting period established by the Secretary through publication of a notice in the **Federal Register**.

(d) In accordance with 34 CFR 668.84 the Secretary may impose a fine on the institution if the institution fails to comply with the requirements specified in paragraphs (a), (b) or (c) of this section.

(Authority: 20 U.S.C. 1070a, 1094)

§ 690.84 [Removed]

17. Section 690.84 is removed.

[FR Doc. 90-21345 filed 9-11-90; 8:45 am]
BILLING CODE 4000-01-M

federal register

Wednesday
September 12, 1990

Part III

Department of the Interior

National Park Service

36 CFR Part 79

Curation of Federally-Owned and Administered Archeological Collections; Final Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 79

Curation of Federally-Owned and Administered Archeological Collections

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule establishes definitions, standards, procedures and guidelines to be followed by Federal agencies to preserve collections of prehistoric and historic material remains, and associated records, that are recovered in conjunction with Federal projects and programs under certain Federal statutes. This action should ensure that federally-owned and administered collections of prehistoric and historic material remains, and associated records, are deposited in repositories that have the capability to provide adequate long-term curatorial services. Issuance of this rule fulfills the Secretary of the Interior's obligations under the National Historic Preservation Act of 1966 and the Archaeological Resources Protection Act of 1979 to issue such regulations.

EFFECTIVE DATES: Copies of this final rule have been transmitted to the Committee on Energy and Natural Resources of the U.S. Senate and to the Committee on Interior and Insular Affairs of the U.S. House of Representatives. This final rule will take effect on October 12, 1990.

FOR FURTHER INFORMATION CONTACT: Michele C. Aubry (Departmental Counsulting Archeologist's office) at 202–343–1876 or FTS 343–1876, or Francis P. McManamom (Chief, Archeological Assistance Division) at 202–343–4101 or FTS 343–4101.

SUPPLEMENTARY INFORMATION:

Background

This final rule being issued under the authority of section 101(a)(7)(A) of the National Historic Preservation Act (16 U.S.C. 470*a*) and section 5 of the Archeological Resources Protection Act (16 U.S.C. 470*dd*). The National Historic Preservation (NHPA) directs the Secretary of the Department of the Interior to issue regulations ensuring that significant prehistoric and historic artifacts, and associated records, recovered under section 110 of the NHPA (16 U.S.C. 470*h*–2), the Reservoir Salvage Act [1] (16 U.S.C. 469–469*c*), and the Archeological Resources protection Act (16 U.S.C. 470*aa-mm*) are deposited in an institution with adequate long-term curatorial capability.

The Archeological Resources Protection Act (ARPA) authorizes the Secretary to issue regulations providing or the exchange, where appropriate, between suitable universities, museums or other scientific or educational institutions, of archeological resources removed from public and Indian lands pursuant to ARPA. In addition, the regulations are to provide for the ultimate disposition of such resources and other resources removed under the Reservoir Salvage Act or the Antiquities Act (16 U.S.C. 431–433). Any exchange or ultimate disposition of resources that are excavated or recovered from Indian lands are subject to the consent of the Indian or Indian tribe that owns or has jurisdiction over the said lands.

Preparation of the Rulemaking

On October 11, 1985, the National Park Service published a notice of intent to propose the rulemaking and a request for comments in the **Federal Register** (50 FR 41527). Thirty-seven commenters submitted ideas and suggestions that were considered and included, as appropriate, in development of the proposed rule. All commenters were supportive of the proposed regulation and the topics identified in the notice of intent.

In an effort to provide affected parties with an opportunity to provide comments during the early stages of regulatory development, on September 26, 1986, the National Park Service distributed a draft of the proposed regulation to a wide range of interested parties. Copies of the draft were sent to State and Federal agencies, national professional archeological and museum organizations, national Native American organizations, and numerous public and private repositories across the nation.

Fifty-six agencies, organizations, repositories, businesses and individuals submitted comments. As is generally the case, the comments received on this early draft were not summarized in the preamble to the proposed rule that subsequently was published in 1987. However, all comments on the draft were considered and most contributed substantially to the rulemaking process.

The proposed rule (36 CFR part 79) for the curation of federally-owned and administered archeological collections was published in the **Federal Register** on August 28, 1987 (52 FR 32740). Public comment was invited for a 60-day period, ending on October 27, 1987. Copies of the proposed rule were distributed to Federal and State agency Historic Preservation Officers; Federal and State agency chief archeologists; the chairmen of Indian tribes, Alaska Native villages and corporations recognized by the Secretary of the Interior; national professional archeological and museum organizations; national Native American organizations; Native American museums located in the United States that are listed in the "Native American Directory," published by the National Native American Co-operative; museums listed in the "Guide to Departments of Anthropology," published by the American Anthropological Association; and repositories listed in ARPA permits that were issued by the National Park Service in 1984 and 1985.

Written comments were received from 41 sources, including 10 from Federal agencies, eight from museums, seven from Indian tribes, seven from State agencies, five from professional scholarly and conservation associations, and one each from a national Native American organization, an electric company association, an oil company and an individual.

Comments were addressed to all of the 10 sections and two appendices of the proposed rule. Comments ranged from as few as three to as many as 83 on a given section. Sections 79.8 and 79.4 drew the greatest volume of comments, receiving 83 and 80 comments, respectively. Sections 79.6, 79.5, 79.3, 79.7 and 79.9 drew the next largest number of comments, receiving 65, 58, 43, 27, and 26 comments, in that order. No other section drew more than 16 comments.

All comments were fully considered when revising the proposed rule for publication as a final rulemaking. In addition, the findings, conclusions and recommendations of the General Accounting Office (GAO), as reflected in its report entitled "Cultural Resources: Problems Protecting and Preserving Federal Archeological Resources" (GAO/RCED–88–3; Dec. 1987), were considered.[2]

[1] The Reservoir Salvage Act (Pub . L. 86–523, June 27, 1960) was amended by the Archeological and Historic Preservation Act (Pub. L. 93–291, May 24, 1974). The amendment expanded application of the Act beyond Federal reservoir projects to include any Federal construction project or federally licensed or funded activity or program. The Act was futher amended by Public Law 95–625 (Nov. 10, 1978). This amendment extended the Act's funding authorities. The amended Act sometimes is referred to as the Archeological Recovery Act or the Moss-Bennett Act. Both titles are merely descriptive names, and are not official short titles.

[2] The purposes of the study were to determine (1) To what extent archeological resources on public

Continued

Valid concerns were addressed to the extent of the National Park Service's legal authorities. Some suggestions were not included because they either were beyond the scope of this regulation or were inconsistent with Federal historic preservation and property management statutes and regulations. Some comments pointed out vague and unclear language so clarifying and explanatory language was added to the rule and the preamble.

Given the volume of comments, it is impractical to respond in detail in the preamble to every question raised or suggestion offered. Some commenters ponted out errors in spelling, syntax and minor technical matters. Those errors have been corrected, and are not mentioned further in the preamble. In addition, many commenters made similar suggestions or criticisms, or repeated the same suggestion on different sections of the proposed rule. In the interest of reducing unnecessary paperwork, comments that are similar in nature have been grouped and are discussed in the most relevant section in the preamble.

Changes in Response to Public Comments

One commenter felt that the rule did not consistently or clearly differentiate those sections or paragraphs that are mandatory from those that are discretionary. In response, the word "shall" is used throughout the rule to indicate which are mandatory; the word "should" is used to indicate which are discretionary. Where appropriate, headings have been added within the sections of the rule to identify whether the paragraphs that follow are standards, guidelines or procedures.

Section 79.1 Purpose

This section received relatively few comments. In response to one commenter's suggestion, the order of the items listed in paragraphs (a) and (b) in this section has been changed to reflect the sequence in which the respective sections and appendices appear in the rule.

One commenter asked that this section mention repatriation of sacred materials to Indians as a form of disposition. In addition, the commenter asked that this section mention that Indians can impose conditions on the treatment of collections that are removed from Indian lands. The commenter also asked that reference be made to provisions for agreements between the U.S. and Indian Governments regarding the recovery, return and treatment of collections.

This section presents the purpose of the rule in a general manner. It is not meant to include references to particular methods of disposition or to procedures for determining the disposition of a collection. Specific language regarding those matters is included in appropriate sections of the rule. Thus, the suggestions have not been incorporated.

Another commenter pointed out that most repositories have standard short-term loan forms, and asked if the sample short-term loan form contained in appendix A to the proposed rule had to be used. A new paragraph (b)(5) has been added to this section to clarify that preexisting forms that are consistent with this regulation may be used in lieu of developing new ones.

One commenter suggested adding an example of a form that could be used when a non-Federal party who holds title to material remains recovered in connection with a Federal project donates those remains to the Federal agency. In response, a new appendix (renumbered App A) has been added to present an example of a deed of gift.

Section 79.2 Authority

This section received relatively little comment, and stands as proposed with only minor rewording.

One commenter suggested that use of the term "significant" in paragraph (a) of this section was inappropriate and misleading in that it inaccurately implies that the rule applies only to collections that are recovered from archeological resources that meet the criteria for listing on the National Register of Historic Places. The language in paragraph (a) is drawn from section 101(a)(7)(A) of NHPA, which directs the Secretary of the Interior to promulgate this regulation. Because the term "significant" is used in the authorizing legislation, it has been retained in paragraph (a). Section 79.3 of this rule clarifies which collections are subject to this part (i.e., the rule applies to collections recovered under the authority of certain statutes, notwithstanding the eligibility of the excavated resource for listing in the National Register of Historic Places).

One commenter recommended revising the language in paragraph (b) of this section to track the language contained in section 5 of ARPA. The paragraph has been changed accordingly.

Another commenter asked that the term "Indian owner" be used in paragraph (b) of this section and in other sections of the rule rather than the phrase "Indian or Indian tribe that owns or has jurisdiction over such lands." This suggestion has not been adopted because it is not in keeping with the language contained in section 5 of ARPA.

The same commenter asked that a new paragraph be added to this section that would refer to the American Indian Religious Freedom Act (42 U.S.C. 1996) and the First Amendment of the Constitution of the United States, and state that the statutory policies that the rule is meant to implement must sometimes yield to constitutionally protected interests. This suggestion has not been adopted because this section is meant to reference only those authorities that authorize the Secretary of the Interior to promulgate this rulemaking.

Section 79.3 Applicability

Paragraph (a) of this section states that this rulemaking applies to collections that are excavated or removed under the authority of the Antiquities Act, the Reservoir Salvage Act, section 110 of NHPA, or ARPA. One commenter suggested that the rule be expanded to apply to collections recovered pursuant to the National Environmental Policy Act (42 U.S.C. 4341). This suggestion has not been adopted because that Act is not among the authorities listed in section 101(a)(7)(A) o NHPA and section 5 of ARPA under which collections subject to this rulemaking are excavated or removed.

However, most Federal and federally authorized surveys, excavations and other studies of prehistoric and historic resources conducted pursuant to the National Environmental Policy Act also generally are conducted under one or more of the authorities listed in section 101(a)(7)(A) of NHPA and section 5 of ARPA. That is, most studies on public lands are conducted under ARPA or the Antiquities Act. In addition, most surveys to identify and evaluate resources are conducted under NHPA, while most excavations to mitigate the effects of a Federal project ae conducted under NHPA and the Reservoir Salvage Act. In fact, rarely are surveys and excavations conducted or authorized by

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lands are being looted for artifacts, (2) what Federal land managing agencies are doing to protect archeological resources on their lands from looting, and (3) whether the artifacts that were recovered from public lands between 1980 and 1985 are being properly preserved. Although the problems are nationwide in scope and involve all major Federal land management agencies, the GAO limited its examination to Arizona, Colorado, New Mexico, and Utah, and to the three major Federal land managing agencies in that area (i.e., the Bureau of Land Management, the Forest Service and the National Park Service).

a Federal agency under authorities other than the Antiquities Act, the Reservoir Salvage Act, section 110 of NHPA, or ARPA. For all practical purposes, this rulemaking applies to most collections generated as a result of a Federal action, assistance, license, or permit.

One commenter recommended that the rule be expanded to apply to paleontological collections recovered in connection with a Federal or federally authorized activity. Another commenter recommended that the rule be expanded to apply to ethnographic collections. As previously mentioned, this rulemaking applies to collections excavated or removed under the authority of the Antiquities Act, the Reservoir Salvage Act, section 110 of NHPA, or ARPA. Any paleontological and ethnographic collections recovered under one of those authorities are subject to this part; otherwise, the rule does not apply.

However, this does not relieve Federal agencies of responsibilities they have under other Federal statutes and regulations to preserve and protect other kinds of federally-owned property, including museum collections, not subject to this rule. The Federal Property and Administrative Services Act (40 U.S.C. 484), its implementing regulation (41 CFR part 101), and several agency-specific statutes and regulations direct Federal agencies to manage and protect such collections. In carrying out these responsibilities, Federal agencies are encouraged to apply and adapt the standards, procedures and guidelines established in this rulemaking to other kinds of collections under their jurisdiction.

Paragraph (a)(1) of this section states that material remains generally are the property of the landowner. Several commenters asked for further clarification on the ownership of material remains excavated or removed under the Antiquities Act, the Reservoir Salvage Act, section 110 of NHPA, or ARPA. For example, some commenters felt that material remains from public lands that once were included in the aboriginal territory of an Indian tribe belong to that tribe rather than to the U.S. Government. Others said that material remains from Indian allotted lands may be the communal property of the Indian tribe that has jurisdiction over such lands rather than the personal property of the individual Indian landowner. The commenters said that, when a question exists, ownership should be determined according to tribal laws, traditions and customs.

Further clarification has not been provided for several reasons. First, common law concerning abandoned, lost and unclaimed property in the United States has been well developed by the courts. Second, property rights concerning archeological resources on public and Indian lands are specified in section 4(b)(3) of ARPA and in § .13 of ARPA's uniform regulations (43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229). Third, it is beyond the scope of this rulemaking to determine rights of ownership on Indian lands.

Several commenters recommended that Federal agencies endeavor to acquire title to material remains that are excavated or removed from non-public lands. Another commenter asked for clarification on a Federal agency's responsibilities when title to the lands from which a collection is excavated or removed changes. We agree in principle that the Federal Agency Official should seek title to material remains that are recovered from non-public lands pursuant to one of the agency's projects or programs, particularly when the lands are to be subsequently acquired by the Federal agency, or when the owner does not have the capability or the desire to provide long-term curatorial services. However, this is beyond the scope of this rulemaking.

Several commenters asked that the rulemaking clarify who owns the data that are generated as a result of a Federal or federally authorized archeological study. A new paragraph (a)(2) has been added to this section to clarify this.

Several commenters asked if preexisting collections, meaning those collections that are placed in repositories prior to the effective date of this regulation, are subject to this rulemaking. Neither the NHPA nor ARPA, which authorize this rulemaking, provides an exemption for preexisting collections. It is important to note that Federal land managing agencies have been responsible since 1906, when the Antiquities Act was passed, for the long-term management and preservation of collections recovered from lands owned or controlled by the U.S. Government. Other Federal historic preservation and property management statutes, enacted between the 1930s and the 1970s, reaffirmed these responsibilities and expanded their application to non-land managing agencies.

The GAO discusses these statutory responsibilities and the adequacy of curation of preexisting, federally-owned collections in its report entitled "Cultural Resources: Problems Protecting and Preserving Federal Archeological Resources" (GAO/RCED-88-3, Dec. 1987). The GAO found that Federal agencies generally were doing little to ensure that the artifacts removed from their lands in the past and sent to curatorial facilities were accounted for and being properly preserved. The GAO recommended prompt issuance of this rulemaking to ensure that the artifacts are properly preserved.

It is beyond the scope of this rulemaking either to change statutory responsibilities of Federal agencies to preserve collections or to authorize a lesser level of care for preexisting collections. Accordingly, a new paragraph (b) clarifies that the rule applies to preexisting and new collections that meet the requirements of paragraph (a) of this section. In addition, paragraph (a) in § 79.5 of the final rulemaking establishes procedures to ensure that preexisting collections are properly managed and preserved.

Another commenter asked whether this rulemaking would cause Federal agencies to breach or modify material terms and conditions contained in any contract, grant, license, permit, memorandum, or agreement entered into by or on behalf of a Federal agency before or after the effective date of this regulation. The commenter was concerned in particular about instances where a Federal agency may require a non-Federal party such as an oil company, public utility or private developer to secure long-term curatorial services on behalf of the U.S. Government, and the actual curatorial arrangement is between the non-Federal party and the repository.

While the requirements contained in this rulemaking must be reflected in future contracts, grants, licenses, permits, memoranda, and agreements, it is not the intent of this regulation to affect material terms and conditions contained in ones entered into prior to the effective date of this regulation. Paragraph (b) clarifies that Federal agencies are not to apply these regulations in a manner that would supersede or breach material terms and conditions contained in contracts, grants, licenses, permits, memoranda, or agreements entered into by or on behalf of a Federal agency prior to the effective date of this regulation.

In a related matter, several commenters asked whether this rulemaking would alter the terms and conditions contained in Antiquities Act permits or ARPA permits for preexisting collections. This rulemaking does not change those terms and conditions. New paragraphs (c) and (d) clarify that collections excavated or removed pursuant to the Antiquities Act or ARPA remain subject to the relevant Act, its implementing regulations, and the terms

and conditions of the pertinent permit or other approval.

New paragraph (e) states that any repository that is providing curatorial services for a collection subject to the regulations in this part must possess the capability to provide adequate long-term curatorial services, as set forth in this rule, to safeguard and preserve the associated records and any material remains deposited in the repository. Since preexisting collections are not exempt from this rulemaking, this applies equally to repositories that agree after the effective date of this regulation to preserve collections, as well as to repositories that agreed prior to the effective date of this regulation to preserve collections. If a repository's officials decide that they can no longer meet their obligations to provide adequate long-term curatorial services under the pertinent contract, grant, license, permit (including Antiquities Act permits and Archaeological Resources Protection Act permits), memorandum, or agreement, those officials must realize that such a decision on their part may negatively affect the repository's present and future standing to house collections subject to the regulations in this part.

Several commenters asked for clarification on when the rulemaking does not apply. As previously indicated, the rule does not apply to collections that are excavated or removed under authorities other than those listed in paragraph(a).

A number of commenters recommended that human remains and funerary objects be exempt from this rulemaking, and be repatriated and reburied. This recommendation was beyond the scope of this rulemaking since section 3(l) of ARPA specifies that graves, human skeletal materials, or any portion or piece thereof are an archeological resource when they are at least 100 years of age and of archeological interest, as determined under ARPA's uniform regulations.

However, alternatives exist for forms of disposition other than retention in a repository. For example, terms and conditions stipulated in Antiquities Act permits and ARPA permits may specify how human remains and funerary objects are treated. In addition, the Federal Agency Official may determine, in accordance with ARPA's implementing regulations, that they are not or are no longer of archeological interest, thereby making them not subject to this rulemaking.

Section 79.4 Definitions

This section received the second largest number of comments. Many comments were submitted on the term "archeological resource," which was a slightly modified version of the definition for the same term of ARPA's implementing regulations. Commenters pointed out that a variety of terms and definitions are used in other applicable statutes to describe the same kinds of resources, and that using one such term and definition incorrectly implies that the others are not applicable.

Specifically, the term "archeological resource" is defined in section 3(l) of ARPA to mean any material remains of past human life or activities that are at least 100 years of age and of archeological interest, as determined under ARPA's uniform regulations. Section 301(5) of NHPA defines the term "historic property" or "historic resource" to mean any prehistoric or historic district, site, building, structure or object that is included in or eligible for inclusion in the National Register of Historic Places. Such properties or resources typically, but not always, are 50 years or older in age. The Antiquities Act uses, but does not define, the term "historic or prehistoric ruin or monument or object of antiquity." Federal land managing agencies generally interpret the term to mean prehistoric and historic resources that are 50 years or older in age. The Reservoir Salvage Act uses, but does not define, the term "significant scientific, prehistorical, historical, or archeological data." The term generally is interpreted to mean prehistoric and historic resources that meet the criteria for evaluation for inclusion of the National Register of Historic Places.

While the definitions for these various terms differ, with few exceptions, the collections of material remains and associated records that are generated pursuant to each of the cited statutes are subject to this final rulemaking. The subject of this rulemaking is the collection, not the resource from which the collection is excavated or removed. Thus, to eliminate possible confusion and misapplication of this rulemaking, the definition for the term "archeological resource" has been deleted. When reference to the resource from which the collection is excavated or removed is needed, the terms "prehistoric or historic resource" and "site" are used, but are not defined. The decision was made to rely on common meanings and dictionary definitions rather than attempt to define the terms, given the variety of statutory definitions.

A few commenters recommended revising the definitions for the terms "of archeological interest," "Indian lands," "Indian tribe" and "public lands." These terms are defined in ARPA and its uniform regulations; thus, it is beyond the scope of this rulemaking to alter them. Instead, "Indian lands," "Indian tribe" and "public lands" have been defined by cross-referencing the existing regulatory definitions. The term "of archeological interest" has been deleted.

A number of commenters felt that it is inappropriate to include human remains within the definition for "material remains," and recommended that it be deleted. The recommendation is beyond the scope of this rulemaking because section 3(l) of ARPA defines an archeological resource to include human remains that are at least 100 years of age and of archeological interest, as determined under ARPA's uniform regulations.

Some commenters recommended that the final rule indicate that human remains and funerary objects are presumed to be sacred objects, and that material remains directly associated with human remains be identified as grave goods within the definition for "material remains." It is beyond the scope of this rulemaking to predetermine the religious or sacred importance that an Indian tribe or other group may ascribe to particular object. Such determinations are made by the Federal Agency Official in consultation with appropriate Indian tribes or other groups. This has been so indicated in the revised definition for "religious remains."

A separate listing for grave goods has not been added to the definition for "material remains" because material remains that are found in direct association with human remains ordinarily consist of artifacts of human manufacture and natural objects used by humans, both of which already are listed under the definition.

Consistent with section 3(l) of ARPA and § –.3(a)(4) of ARPA's uniform regulations, the definition for "material remains" has been revised to clarify that it includes paleontological specimens that are found in direct physical relationship with a prehistoric or historic resource.

One commenter recommended that the definition for "associated records" be revised to exclude copies of public or archival records that are studied and duplicated as a result of historical research. The commenter felt it is unnecessary to maintain duplicate copies of original records that are permanently maintained elsewhere. This recommendation has not been incorporated because copies of such records that are essential to understanding the resource should be maintained as a part of the collection.

Moreover, it is desirable to maintain copies of original public and archival records in case the originals are stolen, lost, damaged or destroyed. Paragraphs (a)(2)(iii) and (a)(2)(iv) of this section have been revised accordingly.

One commenter suggested expanding the definition for "associated records" to include copies of administrative records that are related to the survey, excavation and other study of the resource. The commenter felt that it is important for copies of research proposals, contracts for archeological services, antiquities permits and other administrative records to be maintained as a part of the collection. This has been added in a new paragraph (a)(2)(v).

One commenter suggested revising the definition for "associated records" to require that paper printouts be made of computerized records. The commenter felt that paper printouts would serve as a backup in the event that researchers cannot easily or inexpensively access computerized records. Given the rapidity in which computer technology changes, we agree that paper printouts, on acid free paper, of computerized records should be maintained. However, it is beyond the scope of this rulemaking to stipulate in what medium records should be generated. The purpose of this rule is to ensure that whatever records are generated are properly managed and cared for as a part of the collection.

In response to the few comments received on the definition for the term "curation," minor technical revisions have been made. In addition, the term itself has been changed to "curatorial services."

Two comments were received on the definition for the term "Federal Agency Official." One commenter felt that the words "officially designated to represent the * * * agency" would be interpreted to mean that the designation must be in writing. The commenter felt that representation ordinarily is based on the duties and responsibilities assigned to the position held by the person rather than on a written designation from the secretary of the department or the head of the agency. The definition has been revised to accommodate the commenter's concern.

Another commenter recommended revising the definition for "Federal Agency Official" to clarify that the rulemaking applies only to departments, agencies or instrumentalities of the United States that have authority over collections that are subject to this part. The definition has been revised accordingly.

A number of comments were received on the definition for "professional qualifications," which has been changed to "qualified museum professional." One commenter felt that the rule represented a bias toward archeology, which may not be appropriate in a museum setting. The commenter recommended that training in museum science be mentioned since archeological training alone is not sufficient to qualify a person for collection management positions. One commenter recommended that the definition refer to the Office of Personnel Management's (OPM) "Qualifications Standards for Positions under the General Schedule (Handbook X–118)" (U.S. Government Printing Office, stock No. 906–030–00000–4 (1986)), which establish educational, experience and training requirements for employment with the Federal Government. Another commenter recommended that the definition specify the relevant occupational series, presumbly meaning those contained in OPM's "Position Classification Standards for Positions under the General Schedule Classification System" (U.S. Government Printing Office, stock No. 906–028–00000–0 (1981)). Three commenters recommended that the definition refer to the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716, Sept. 29, 1983), which contain professional qualification standards that are significantly higher than the entry level qualification standards established by OPM. Commenters generally expressed concern that the highest reasonable standards be specified to assure that collections are not lost through improper handling, treatment or storage.

In response to the comments, the definition for "qualified museum professional" has been revised to mean a person who possesses knowledge, experience and demonstrable competence in museum methods and techniques appropriate to the nature and content of the collection under his or her care, and commensurate with the person's duties and responsibilities. Examples of standards that may be used for classifying positions and for evaluating a person's qualifications are listed, including those that have been issued by OPM and the Secretary of the Interior.

Another commenter recommended that the definition for "qualified professional" be expanded to recognize the expertise of individual Indians in administering collections. The commenter noted that such expertise may have been gained through experience or because the Indian individual is recognized by the Indian tribe as an elder.

There is no question that Indian tribal elders and religious leaders have expertise in the management, care and use of material remains that have traditionally been considered of religious or sacred importance by their respective tribes. This expertise is acknowledged in § 79.6(c) of the final rule, which lists Indian tribal elders and religious leaders, the Tribal Historic Preservation Officer, and professionals in Indian tribal museums as sources for technical assistance. In addition, at various points throughout the rule, the Federal Agency Official is encouraged to consult with these experts.

The definition for "religious or sacred object," which has been changed to "religious remains," has been revised to accommodate suggestions that material remains should be considered to be of religious or sacred importance when they traditionally have been so considered by an Indian tribe or other group because of customary use in religious rituals or spiritual activities. The Federal Agency Official makes this determination in consultation with appropriate Indian tribes or other groups.

Three commenters noted that the definition for the term "repository" should be revised to include facilities that are operated by Indian tribes. This has been added.

Another commenter felt that the definition for the term "repository" implies that a particular kind of repository must be used, thereby in undue interference with the private sector. We disagree. The definition states that a repository must be able to provide professional, systematic and accountable curatorial services on a long-term basis. The examples provided (i.e., a facility managed by a university, college, museum or other educational or scientific institution) are taken directly from the Antiquities Act and ARPA. The definition does not exclude a private sector repository that can provide professional, systematic and accountable curatorial services on a long-term basis.

Another commenter felt that the definition for the term "repository" implies that a repository could use consultants in lieu of hiring its own staff. The commenter felt that using only consultants would lead to inadequate care of the collections. Certainly, a repository must have some staff to be able to provide professional, systematic and accountable curatorial services on a long-term basis. However, it also is appropriate for a repository to use consultants from other institutions to provide technical advice, particularly on

non-routine matters such as the conservation of a unique or fragile object. The use of consultants probably would be more prevalent in smaller sized repositories where it is less likely to be cost effective to have a cadre of specialists on staff. The ambiguous language in the definition has been deleted. The commenter's concern is addressed in § 79.9(b)(4) in the final rule.

Two new definitions have been added to the final rule. First, the term "personal property" has been added. The term is defined by cross-referencing the definition contained in 41 CFR part 101–43 on the utilization of personal property. Section 101–43.001–14 of title 41 defined "personal property" to include property of any kind or interest therein, except real property, records of the Federal Government, and certain categories of naval vessels. Collections, equipment (e.g., a specimen cabinet or an exhibit case), materials, and supplies are classes of Federal personal property. Materials and supplies usually are considered to be expendable personal property, while collections and equipment are considered to be accountable personnel property.

Second, the term "Repository Official" has been added. The definition is comparable to the definitions for "Federal Agency Official" and "Tribal Official."

Two commenters asked that a definition be provided for the term "federally-owned or administered." The decision was made to leave the term undefined because § 79.3(a) of this rule clarifies which collections are subject to the rulemaking.

One commenter asked that definitions be provided for the terms "object" and "lot." The decision was made to leave the terms undefined, relying instead on common meanings or dictionary definitions.

Section 79.5 Minimum Capability Requirements for Repositories (Renumbered § 79.9; Retitled "Standards To Determine When a Repository Possesses the Capability To Provide Adequate Long-term Curatorial Services")

This section has been revised to clarify the standards that a repository must meet in order for Federal Agency Official to determine that the repository possesses the capability to provide adequate long-term curatorial services. Paragraphs (a) and (b) in this section of the proposed rule have been deleted because the topics are addressed in other sections of the final rule (i.e., in §§ 79.5 and 79.6). Paragraph (c) in this section of the proposed rule has been divided into two new §§ 79.9 (a) and (b) in the final rulemaking. In addition, paragraphs (c)(1) through (c)(10) in this section of the proposed rule have been slightly reworded, consolidated to accommodate public comments, and reordered. They appear as §§ 79.9 (b)(1) through (b)(9) in the final rule.

One commenter suggested that the Federal Agency Official review and approve a repository's facilities, written curatorial policies and operating procedures. This suggestion has not been adopted because it is beyond the scope of this rulemaking to establish a certification program that would result in a list of federally approved repositories. Moreover, a repository may possess the capability to provide long-term curatorial services for one kind of collection but not another, depending on the nature and content of the collections. Thus, Federal agencies should not presume that a repository that maintains some collections on behalf of the Federal Government is capable of maintaining their particular collections.

One commenter felt that requiring a repository to "substantially comply" with the activities listed under paragraph (b) in the final rule was inadequate guidance, although the commenter did not offer an alternative suggestion. Several other commenters pointed out that the activities required for each collection would differ according to the nature and content of the collection. For example, a collection comprised primarily of lithic materials would require less stringent environmental controls than would a collection comprised primarily of basketry. It would follow that, all else being equal, a repository that lacks a central heating and air conditioning system would possess the capability to provide adequate long-term curatorial services for the former, but not the latter, collection. In response to these concerns, the paragraph has been revised to state that a repository would have to comply with the activities listed, as appropriate to the nature and content of the collection.

One commenter asked whether the intent of paragraph (b)(1)(iv) in the final rule is to require a repository to photograph all collections. This is not the intent of that paragraph. The purpose of paragraph (b) is to assure that a repository has the capability to perform certain activities such as maintaining photographs that are a part of a collection. Any requirements (e.g., photographing a collection) that a Federal agency might want to place on a repository would be identified in the contract, memorandum or agreement between that agency and the repository for curatorial services.

One commenter felt that it would be unreasonable and costly to require a repository to have an adequate emergency management plan for responding to man-made and natural disasters. We disagree. It is standard operating practice, or should be, for repositories to have such plans. The requirement has been retained, and appears in § 79.9(b)(3)(iv) of the final rule.

Paragraph (b)(5) of the final rule has been revised and expanded to indicate that a collection is to be handled, stored, cleaned, conserved and exhibited in a manner that is appropriate to the nature of the material remains and associated records, and in a manner that preserves data that may be studied in future laboratory analyses. It also acknowledges that, when material remains in a collection are to be treated with chemical solutions or preservatives that will premanently alter the remains, it may not always be possible to retain untreated representative samples of each affected category.

One commenter felt that the Federal Agency Official should approve all proposed treatments before they are performed. This suggestion has not been incorporated into the final rule because any restrictions on treatments, especially routine ones, are to be specified in the contract, memorandum or agreement for curatorial services.

Several commenters asked whether a repository had to store the associated records that are listed in paragraph (b)(6) in the final rule according to one or more of the methods listed. The paragraph has been revised to clarify that the methods listed are merely examples of methods that would protect the records from theft and fire. Other methods not identified in the rulemaking that would accomplish the goal of protecting records from theft and fire would be appropriate as well.

At the request of several commenters, paragraph (b)(6)(iii) in the final rule has been revised and expanded to list other parties that frequently maintain records. Additions include the State museum or university, the Tribal Historic Preservation Officer, the National Technical Information Service and the Defense Technical Information Service.

One commenter suggested revising paragraphs (b)(7) and (b)(8) in the final rule to specify the frequency in which inspections and inventories are to be conducted. This suggestion has not been adopted because the frequency of inspections and inventories is addressed in § 79.11 of the final rule.

A number of commenters pointed out that many repositories that currently house and care for preexisting collections do not possess the capability to provide adequate long-term curatorial services, as specified in this section. Commenters said that increased funding would be required for many of those deficient repositories to meet the requirements of this rulemaking. Some commenters suggested adding a new section that addresses preexisting collections and provides a means for Federal agencies to assist deficient repositories.

We agree that many repositories, including some that are owned and operated by the U.S. Government, do not meet the requirements of this rulemaking. This is to be expected because, in the absence of a governmentwide regulation such as this, Federal agencies and repositories have developed and used different standards, guidelines, policies, procedures, and manuals.

The purpose of this rulemaking is to establish one set of standards that will ensure that collections subject to this part are properly managed and preserved. Preexisting collections are not to receive a lesser standard of care than new collections. The commenters' concerns have been addressed in §§ 79.5 and 79.7 of this final rule. Specifically, § 79.5(a) calls for the Federal Agency Official to evaluate the curatorial services being provided to preexisting collections, and to take certain actions when the services are not adequate. Sections 79.7 (a)(5) and (a)(6) clarify that such activities may be funded by Federal agencies.

Section 79.6 Use of Collections (Renumbered § 79.10)

One commenter felt that Federal agencies have an obligation to make publicly owned or administered collections available for legitimate study and use. We agree. This section has been revised to say that Federal agencies shall ensure that collections are made available for scientific, educational and religious uses, subject to such terms and conditions as are necessary to protect and preserve the condition, research potential, religious or sacred importance, and uniqueness of the collection.

Several commenters asked who should review and respond to requests to use a collection, the Federal agency or the repository? One commenter recommended that the Federal agency review and approve all requests while another suggested that the Federal agency approve only consumptive uses. One commenter recommended that the repository be given the authority to review and approve requests. Another commenter saw the involvement of the Federal agency as unnecessary and burdensome, and said that it could unreasonably delay archeologists working under contracts to complete reports within short time frames.

Repositories generally have extensive experience in responding to requests to use collections because the activity is a routine element of providing curatorial services. On the other hand, many, if not most, Federal agencies generally have neither the experience nor qualified professional staff to evaluate such requests. We agree that potential users could be unnecessarily delayed if the repository were required to submit requests to the Federal agency for review and approval.

Therefore, paragraph (a) in this section clarifies that the Repository Official is responsible for making collections available in accordance with any terms and conditions specified in the contract, memorandum or agreement for curatorial services. In addition, paragraph (j) in § 79.8 recommends that the contract, memorandum or agreement for curatorial services specify whether the repository is to approve consumptive uses. Otherwise, the Federal Agency Official should review and approve consumptive uses.

Paragraph (b) in this section discusses scientific and educational uses of collections. Curators, conservators, collection managers and exhibitors have been added to the list of qualified professionals who might use a collection for scientific and educational uses, while students have been deleted from the list. Students may use a collection when under the direction of a qualified professional. The paragraph now requires that copies of any resulting publications be provided to certain parties, and the certain parties be acknowledged in any resulting exhibits and publications.

Paragraph (c) in this section discusses religious uses of collections A large number of commenters asked that the rule define or provide guidance on who in qualified to use religious remains in a collection. The First Amendment to the U.S. Constitution generally prohibits the Federal Government from determining which persons are appropriate for practicing a particular religion. The concerns raised by commenters have been adressed, to the extent possible, by providing examples of persons who might have an interest in religious remains for use in religious rituals or spiritual activities

Paragraph (d) in this section specifies restrictions that are to be placed on the use of collections. The text of paragraph (d)(1) more accurately reflects the language in section 9(a) of ARPA and section 304 of NHPA regarding withholding information relating to the nature, location or character of a prehistoric or historic resource. Paragraph (d)(2) specifies to whom confidential information may be released and how requests for the information are to be made. The text of this paragraph follows the language in section 9(b) of ARPA and § –.18 of ARPA's implementing rules regarding the release of confidential information.

Several commenters felt that, until such time as a mechanism of repatriation of human remains and funerary objects is established, exhibition of such materials should be prohibited. Others thought that human remains and funerary objects should be available for exhibitions, research and educational purposes when done sensitively or when there are no known descendants. A few commenters said that Indian owners must consent to uses of collections from Indian lands. Other commenters said that Federal agencies should consult Indian tribes prior to determining how to handle religious remains.

Those concerns have been addressed in paragraphs (e) and (f) of § 79.8 and in paragraphs (d)(3) and (d)(4) of § 79.10. The text of these four paragraphs conform to the requirements of sections 4(c) and 4(g)(2) of ARPA, and §§ –.7 and –.9 of ARPA's implementing regulations. As a result of these changes, § 79.6(b)(4) in the proposed rule has been deleted.

Specifically, when a collection is from Indian lands, § .8(e) requires that any contract, memorandum or agreement for curatorial services include such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands. In this regard, paragraph 79.10(d)(3) requires the placement of such terms and conditions as may be requested on the use of material remains and on access to associated records.

When a collection is from a site on public lands that the Federal Agency Official has determined is of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such lands, paragraph 79.8(f) requires that any contract, memorandum or agreement for curatorial services include such terms and conditions as may have been developed pursuant to § –.7 of ARPA's uniform regulations. In this regard, § 79.10(d)(4) requires the placement of such terms and conditions as may have been developed on the use

of material remains and on access to associated records.

Paragraph (e) in this section requires a written loan agreement between the Repository Official and the borrower. Sections 79.10 (e)(1) through (e)(6) specify the minimum contents of a loan agreement.

Paragraph (f) in this section says that the Federal agency in to ensure that the repository maintains administrative records that document approved scientific, educational and religious uses of the collection.

Paragraph (g) in this section says that repositories may charge reasonable user fees. Several commenters noted that repositories generally have standard fee structures associated with the use of collections. They pointed out that fee structures ordinarily are determined based on the repository's internal operating procedures. For example, enabling legislation, charters or bylaws may specify whether fees may be charged and how the fees are to be determined. Another commenter questioned the authority of the U.S. Government to influence a repository's fee structure. As a result of these comments, the statement that "Fees should be determined in consultation with the Federal Agency Official" has been deleted.

Two other commenters suggested that Indian owners and tribal members be exempt from paying fees when they use collections from Indian lands or when they use religious remains in religious rituals or spiritual activities. As previously indicated, repositories ordinarily base fee structures on internal operating procedures. Certainly, when such fees are charged they should be of a reasonable nature for the purpose of recovering actual costs incurred in connection with making collections available. When a repository does charge a user fee, any desired exemptions should be written into the contract, memorandum or agreement for curatorial services.

Section 79.7 Contracts and Agreements (Renumbered § 79.8; Retitled "Terms and Conditions To Include in Contracts, Memoranda and Agreements for Curatorial Services")

Paragraph (a) in this section of the proposed rule has been deleted because it relates to activities that take place prior to the conduct of field work that generates a collection, a subject that is beyond the scope of this rulemaking. However, it is extremely important for Federal Agency Officials to consult with curators, collections managers and conservators at the repository that will be receiving the anticipated collection regarding the repository's procedures, and to instruct field personnel in those procedures, so that the collection may be properly prepared in the field for submittal to the repository. For example, field personnel should be made aware of the repository's procedures for cleaning, labeling, cataloging, documenting, conserving and packaging material remains. They also should be made aware of the repository's procedures for preparing, handling, organizing and processing associated records. The importance of this should not be underestimated because, when a collection is not properly prepared in the field, a repository often will require more funds to process the collection.

Paragraph (b) in this section of the proposed rule has been revised to say that Federal agencies are to ensue that any contract, memorandum, agreement or other appropriate written instrument for curatorial services includes the terms and conditions contained in this section. The paragraph appears in the final rule as the introductory statement to this section.

Paragraphs (a) through (q) in the final rule list the terms and conditions to be included. Some paragraphs appeared in the proposed rule as paragraphs (b)(1) through (b)(10). Several new paragraphs have been added to accommodate suggestions from commenters.

A new paragraph (a) requires that any contract, memorandum, agreement or other appropriate written instrument for curatorial services contain a statement that identifies the collection or group of collections to be covered.

Paragraph (b) requires a statement that identifies who owns and has jurisdiction over the collection.

New paragraphs (c) and (d) require statements that describes the work to be performed by the repository, and the responsibilities of the Federal agency and any other appropriate party.

Paragraph (e) requires a statement that, when the collection is from Indian lands, the Indian landowner and the Indian tribe having jurisdiction over the lands consent to the disposition. It also requires the inclusion of such terms and conditions as may be requested by the Indian landowner and the Indian tribe.

Several commenters noted that, when a collection is from a site on public lands that the Federal Agency Official has determined is of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such lands, any contract, memorandum or agreement for curatorial services must contain such terms and conditions as may have been developed during consultations between the Federal agency and the pertinent Indian tribe. One of those commenters pointed out that this would be particularly important to ensure that religious remains are treated in a manner that will not place a burden on religious beliefs and practices. A new paragraph (f) addresses those comments.

Paragraph (g) requires that the term of the contract, memorandum or agreement; and procedures for modification, suspension, extension, and termination be specified.

One commenter voiced concern about the Federal Government entering into contracts, memoranda and agreements for curatorial services that have a finite term. The commenter was concerned that, when a repository declines to renew such an arrangement, the Federal Government would have to pay costs associated with transporting and processing the collection into another repository, and that this scenario could be repeated time and time again.

It certainly is possible that the scenario described by the commenter could happen. However, we believe that it is unlikely to occur, particularly on any regular basis because, when a repository agrees to house and maintain a collection, it generally does so because its professional staff have a research interest in the collection. Typically, researchers prefer to retain collections within their own facility on a long-term, if not a permanent, basis so that the collections within their own facility on a long-term, if not a permanent, basis so that the collections are readily available for study and restudy. In any event, when a Federal agency is providing funds to a repository to maintain a contract, memorandum or agreement for curatorial services, there must be a finite term because Federal agencies cannot obligate future year monies until appropriated by the U.S. Congress. In such instances, agencies should include amounts necessary for maintaining contracts, memoranda and agreements for curatorial services in annual requests for appropriations and in annual operating budgets.

One commenter recommended adding a statement to paragraph (g) that Indian owners of collections be notified in the event of termination or suspension of a contract. Another commenter recommended adding a statement that specifies the responsibilities of the repository when it, rather than the Federal agency, terminates a contract. The commenter was concerned about situations where the Federal Government had provided the repository with funds to build additional, permanent storage areas, and wondered

how the Federal Government would be compensated.

The procedures for modifying, suspending, extending, and terminating the contract, memorandum or agreement should address these concerns, as appropriate. This is implicit in pragraph (g), which purposefully is written in a generic manner. Thus, the suggestions have not been added.

Paragraph (h) requires a statement that identifies costs associated with the contract, memorandum or agreement; the funds or services to be provided by the repository, the Federal agency and any other appropriate party; and the schedule for any payments.

Paragraph (i) requires inclusion of any special procedures and restrictions for handling, storing, inspecting, inventorying, cleaning, conserving and exhibiting the collection.

Paragraph (j) requires inclusion of instructions and any terms and conditions for making the collection available for scientific, educational and religious uses. The paragraph has been revised to remove awkward language that was contained in the proposed rule.

Paragraph (k) requires inclusion of instructions for restricting access to information relating to the nature, location and character of the prehistoric or historic resource from which the material remains are excavated or recovered.

One commenter suggested adding a requirement that the Federal Agency Official be notified whenever a collection under the agency's jurisdiction is used for research since the results of the research could benefit the agency. Certainly, Federal agencies may benefit from the results of such studies, and should receive copies of any resulting publications. A new paragraph (l) requires that copies of such publications be provided to the Federal Agency Official and other pertinent parties. If a Federal agency or other pertinent party would like to be notified each time that a collection under its jurisdiction is used, this should be stipulated in the contract, memorandum or agreement for curatorial services. We believe that such notification should be discretionary and, therefore, have not included it as a requirement in this final rulemaking.

One commenter suggested revising § 79.7(b)(4) in the proposed rule to require that inspections and inventories be conducted at least every three years. This suggestion has not been incorporated because the frequency will vary according to the nature and content of the collection. Section 79.11 of the final rule sets forth requirements and guidance for determining the frequency that is appropriate for a particular collection.

Whatever frequency is determined to be appropriate is to appear in the contract, memorandum or agreement for curatorial services for that collection. This is reflected in § 79.8(m) in the final rulemaking.

One commenter was concerned that a repository might respond directly to a request for transfer or repatriation of a collection without the approval of the Federal Agency Official. In response, a new paragraph (n) requires the Repository Official to redirect any such request to the Federal agency and, when the Federal agency is administering the collection on behalf of a non-Federal owner, to the owner. Paragraph (o) prohibits the Repository Official from transferring, repatriating or discarding a collection without the written permission of the Federal agency and, when the collection is not federally-owned, the owner.

Paragraph (p) requires a statement that the Repository Official shall not sell the collection, while paragraph (q) requires a statement that the repository shall provide curatorial services in accordance with the regulations in this part.

One commenter suggested that the collection being received by a repository under a contract, memorandum or agreement should enhance or be in line with the museum's mission statement. We agree with the basic concept upon which this suggestion is based. That is, a repository that has expertise in maintaining certain kinds of collections would be more likely to provide adequate, long-term care for similar collections than would a repository that lacks such expertise. This concept is reflected in § 79.6(b) of the final rule, which presents guidelines for selecting a repository.

Section 79.8 Disposition of Collections (Divided Into Two Sections, as Follows: Renumbered § 79.5, Retitled "Management and Preservation of Collections"; and Renumbered § 79.6, Retitled "Methods To Secure Curatorial Services")

This section received more comments than any other section. In response, it has been substantially revised and divided into two sections. Renumbered § 79.5 establishes Federal agency responsibilities for the long-term management and preservation of collections that are subject to this part. Renumbered § 79.6 identifies a variety of methods that can be used by Federal agencies to secure curatorial services.

Renumbered § 79.5. Section 79.5(a) in the final rulemaking sets forth procedures by which Federal agencies ensure that preexisting collections are being properly managed and preserved. Federal agencies are to review and evaluate the curatorial services that are being provided by repositories to preexisting collections. When an agency determines that the services are inadequate, the agency may either work cooperatively with the repository and other appropriate parties to eliminate the inadequacies within a reasonable time frame and schedule, or move the collections to another repository that does have the capability to provide adequate long-term curatorial services. Prior to moving collections, Federal agencies should determine if it may be more cost effective to provide funds or services to the repository to assist in eliminating the inadequacies.

The time frame and schedule to eliminate inadequacies will vary according to the specific actions to be taken and the level of funds or services to be provided by the various parties. Ten or more years may be appropriate in some cases while one or two years may be appropriate in other cases. Deficient repositories that are unwilling or unable to take steps to eliminate inadequacies must realize that such a decision on their part may negatively affect their facility's present and future standing to house collections subject to these regulations.

Section 79.5(b) of the final rulemaking sets forth procedures by which Federal agencies are to deposit collections in a repository. Much of the substance has been taken from § 79.8(a) in the proposed rule. However, § 79.8(a)(1) in the proposed rule has been deleted to remove the implication that a Federal agency is to select a repository in consultation with other parties such as the State Historic Preservation Officer. Although a Federal agency may consult with experts such as those listed in § 79.6(c) of this final rule for technical assistance, the Federal Agency Official is the decisionmaker in regard to selecting a repository.

Section 79.5(c) of the final rulemaking identifies certain administrative records that Federal agencies are to maintain on the disposition of each collection. It contains what was listed in § 79.8(f) in the proposed rule. These records are not to be confused with associated records, as defined in § 79.4 of this part, which are maintained by the repository as a component of the collection.

Several commenters questioned the need for Federal agencies to maintain administrative records on the disposition of their collections. We disagree. The GAO reported (GAO/

RCED–88–3, Dec. 1987) that the Federal agencies it had studied lack records and systems for maintaining accountability over their collections. Unfortunately, this is the case with many Federal agencies. It is all too common for an agency not to know the location or contents of its collections, let alone know what collections it owns. The requirement to maintain administrative records has been retained in the final rulemaking.

A number of commenters recommended that pertinent non-Federal parties receive copies of certain associated records. For example, each State has officials who are responsible for developing and implementing the State's historic preservation plan, and for maintaining the State's site files. Many Indian tribes also have officials who carry out comparable activities for the tribe. Commenters said that these officials need to be provided with information about prehistoric and historic resources that are within their respective States and reservations, including information on the disposition of collections that are excavated or removed from those resources.

We agree that pertinent State and Tribal Officials and other appropriate parties should be provided with certain information and documentation. However, because this matter was not addressed in the proposed rule that was published on August 28, 1987 (52 FR 32740), it cannot be addressed in this final rulemaking. Proposed amendments to this part that would call for the distribution of records to other parties appear in 90–21349 published elsewhere in this issue of the Federal Register.

A number of commenters suggested that the rule provide a process for the repatriation of human remains and funerary objects to the pertinent Indian tribes for religiously prescribed treatment. One of those commenters felt that any repatriation rule must be developed in consultation with Indian tribes and traditional religious leaders.

Since the inception of the discipline in the nineteenth century, archeologists have excavated, studied and preserved human remains and objects found in unmarked graves at prehistoric and historic sites. The study of such materials can yield important information on a wide variety of topics, including human evolution and migrations; the social customs and values of past societies; dietary practices, social organization, subsistence strategies and health of past societies; and the epidemiology of diseases. Today, however, many Indian groups object to the excavation, study and retention of such materials in museums for future study.

Many different and often conflicting points of view have been expressed by Indian tribes, the scientific community, and State and Federal agencies on the repatriation of human remains, funerary objects and other material remains found in archeological sites and collections that may be of religious or sacred importance. The extreme positions in this debate are: (1) Human remains and funerary objects are sacred and should be reburied; they are not scientific specimens or property that can be owned by any person, museum or government agency; and (2) human remains and objects excavated or removed from unmarked graves at prehistoric and historic sites are scientific specimens that should be studied and preserved in a museum so that they will be available in the future for additional research when new analytical techniques are developed. There are many positions between these extremes.

During the past decade, the number of requests made by Indian tribes to museums and Federal and State Governments for repatriation and reburial of human remains and funerary objects has increased. A few Indian organizations have issued resolutions and statements urging the repatriation and reburial of all materials in the nation's museums that the organizations consider to be of religious or sacred importance. Several national archeological and museum organizations have adopted policies for their memberships to follow when excavating or storing human remains and objects that may be of religious or sacred importance. Many State Governments have enacted legislation to address the excavation and reburial of human remains located on State lands. A number of Federal agencies have adopted agency-specific policies and procedures to respond to requests for repatriation of human remains and funerary objects excavated or removed from public lands. In addition, during sessions of the 100th and 101st U.S. Congress, a number of bills have been introduced that would address the issue at a national level.

The issue is a complex one that requires sensitivity, patience and compromise by all parties involved. Experience has shown that all parties can benefit when requests for repatriation and reburial are handled on a case by case basis, using existing authorities, regulations, policies and procedures (e.g., by placing terms and conditions in an ARPA permit).

In any event, a procedure that would call for the release of human skeletal remains, funerary objects and other religious remains cannot be included in the final rulemaking because this matter was not addressed in the proposed rule that was published on August 28, 1987 (52 FR 32740). A procedure for releasing particular human skeletal remains and objects excavated or removed from public lands into the custody of the pertinent Indian tribe or other Native American group is being drafted by the Departments of the Interior, Agriculture, Defense, and the Tennessee Valley Authority as part of an amendment to ARPA's uniform regulations. In addition, the Department of the Interior is revising its "Guidelines for the Disposition of Archeological and Historical Human Remains," issued on July 23, 1982. Both documents would be subject to public review and comment.

Many commenters said that § 79.8(e) of the proposed rule, which prohibits the Federal Agency Official from discarding a collection, is too restrictive. Commenters felt that the rule should provide a mechanism to discard material remains that were indiscriminately collected or have no scientific value. others said that material remains that consist of bulky, highly redundant, non-diagnostic items (e.g., unmodified shell, bricks and fire-cracked rock) are valuable and should be collected, analyzed and reported upon. However, because of the sheer volume of these types of remains and their limited potential for future research, the commenters said that, after analysis and reporting is complete, only a sample should be retained for future research.

We agree that Federal agencies should be able to discard, under certain circumstances, particular material remains. However, because procedures that would provide for the discard of material remains were not included in the proposed rule that was published on August 28, 1987 (52 FR 32740), such procedures cannot be included in the final rulemaking. Proposed amendments to this part that would establish procedures for discarding material remains appear in 90–21349 published elsewhere in this issue of the Federal Register.

Renumbered § 79.6. Section 79.8(d) of the proposed rule, which lists methods that can be used by Federal agencies to secure curatorial services, has been revised and appears as paragraph (a) of renumbered § 79.6. Two methods that appeared in the proposed rule have been deleted and one method has been clarified.

Several commenters questioned the authority of a Federal agency to transfer title (whether by donation or exchange) to a federally-owned collection to a non-Federal party. After examining applicable statutes and accompanying regulations and legislative histories, it is clear that Federal agencies do not have such authority. As a result, the method of transferring a collection by donation from a Federal agency to a non-Federal party has been deleted. For the same reason, the method of exchanging collections has been deleted.

The applicable authorities include the Antiquities Act and 43 CFR part 3, which state that collections that are recovered under that Act are to be deposited in a public museum and, when the museum ceases to exist, in the proper national depository. ARPA and its implementing rules also state that collections that are excavated or removed from public lands pursuant to that Act are to remain the property of the U.S. Government. Furthermore, because collections increase in value (e.g., scientific, interpretive or commercial) over time, they would not be categorized as surplus Federal personal property that could be transferred by donation to a non-Federal party under the Federal Property and Administrative Services Act (40 U.S.C. 484) and 41 CFR part 101.

The legislative history accompanying ARPA provides further clarification in regard to the intent of the term "exchange" as used in section 5 of the Act. Specifically, on page 10 of Senate Report No. 96–179, the U.S. Senate's Committee on Energy and Natural Resources says that "* * * those establishments or agencies that maintain exhibition artifacts should be able, as they have in the past, to exchange their cultural resources with other establishments or agencies for the scientific and educational benefit of the public." On page 9 of House Report No. 96–311, the U.S. House of Representatives' Committee on Interior and Insular Affairs says that "* * * all archaeological resources removed from public lands and copies of the associated records and data will remain the property of the United States and be preserved in a suitable location, such as a museum or university * * *" and that the "* * * subsequent storage or display of these artifacts should not, however, be narrowly construed and may include private as well as public museums or institutions which have adequate resources to protect the artifacts and to provide a public, educational, or interpretive service." Clearly, the intent is for the Federal Government to maintain title to collections recovered from public lands, and that those collections are to be stored or loaned to institutions that will exhibit and interpret them for the public.

One commenter expressed confusion over the meaning of § 79.8(d)(2) of the proposed rule, which says that Federal agencies could include curatorial requirements in an initial permit or contract for archeological services. This was meant to apply to archeological activities permitted under ARPA, the Antiquities Act or other authority, where the Federal land manager could require the archeological permittee to provide for curatorial services as a condition to the issuance of the archeological permit. This has been clarified in renumbered § 79.6(a)(6).

Section 79.8(b) in the proposed rule, which provides guidelines to assist Federal agencies in selecting a repository, appears as renumbered paragraph 79.6(b) in the final rule. While the paragraph has been shortened by removing redundant language, the substance remains the same.

Several commenters felt that, by following the guidelines in this paragraph, costs for curatorial services would be higher. For example, one commenter said that Federal agencies would have to move preexisting collections such as those in repositories that are located far from the site or project area. Another commenter said that licensees and permittees such as an electric utility are required to seek lowest cost bids, and was not convinced that the guidelines would reduce curatorial costs.

We disagree. The guidelines in § 79.6(b) are suggestions, not requirements. Federal agencies are not under any obligation to move preexisting collections if the repositories that are caring for those collections have the capability to provide adequate long-term curatorial services, as set forth in this regulation. When contracting for curatorial services, Federal agencies consider the cost proposal as well as the technical proposal. To receive a contract, the repository's technical proposal must respond to the scope of work and the cost proposal must be within the limits set in the request for proposal. The guidelines contained in this rulemaking are based on the assumption that a repository that has been maintaining collections from a particular site, project location, geographic region or cultural area generally is more likely to be able to provide curatorial services for an additional collection from the same site, location, region or area at a lower cost than a repository that does not have such expertise.

Section 79.8(c) in the proposed rule, which identifies sources for technical assistance, appears as renumbered § 79.6(c) in the final rule. In response to several comments, it has been expanded to include Tribal Historic Preservation Officers, staff at Indian tribal museums, Indian tribal elders and religious leaders. When a collection contains remains of tribal religious or sacred importance, consultations with such persons would be particularly important to ensure that appropriate terms and conditions are included in the contract, memorandum or agreement for curatorial services. For example, it may be appropriate for tribal elders and religious leaders to conduct certain ceremonies prior to the placement of the collection in the repository or to perform periodic ceremonies in the repository.

Section 79.9 Periodic Inspections (Renumbered Section 79.11; Retitled "Conduct of Inspections and Inventories")

One commenter suggested that the process of conducting periodic inspections and inventories would generate a lot of unnecessary work and documentation that would not be cost-effective. Another commenter felt that inspections are redundant and unnecessarily burdensome. We disagree. By law, Federal agencies are accountable for property that is owned by the U.S. Government. Periodic inspections and inventories of Federal personal property, which includes collections subject to this part, must be conducted and documented to comply with Federal statutes and regulations governing the management of Federal property. Such activities also are standard practice within the museum profession. This requirement has been clarified in § 79.11(a) of the final rule.

Section 79.11(b) of the final rule states that the Federal Agency Official is responsible for ensuring that the Repository Official performs certain inspections and inventory activities on behalf of the Federal agency. This revision has been made to clarify that the Federal agency, not the repository, is responsible for complying with Federal statutes and regulations on the management of Federal property. The activities listed in this paragraph appeared in § 79.9(a) in the proposed rule. References to collections from Indian lands and to the participation of Indian tribal representatives in inspections and inventories have been added, where appropriate.

One commenter felt that many repositories would cancel curatorial agreements with Federal agencies if they are required to inventory collections on an annual basis at no cost to the Federal agency. Another commenter stated that Federal agencies should pay costs associated with inspections and inventories. A third commenter asked who would pay for the inspections.

The rulemaking does not require that collections be inventoried annually. It requires that collections be inventoried periodically, with the frequency to be mutually agreed upon, in writing, by the Federal Agency Official and the Repository Official. In addition, the rule does not require that repositories conduct inventories and inspections at no cost to the U.S. Government. Section 79.7(a)(5) of the final rule states that costs associated with inventories and inspections may be funded by Federal agencies.

Section 79.11(c), which appeared as § 79.9(b) in the proposed rule, specifies that certain inspections are to be conducted by Federal agency staff. One commenter suggested that these inspections be delegated to other parties because a Federal agency may not have the expertise or resources to perform the inspection. These particular inspections cannot be delegated to non-Federal parties. However, recognizing that the level of curatorial expertise varies greatly among the different Federal agencies, Federal agencies that lack sufficient staff expertise should consult with persons such as those listed in § 79.6(c) who do have expertise in curatorial matters. Alternatively, agencies should enter into an interagency agreement with another Federal agency, as provided in § 79.11(e), that does have the necessary staff expertise.

Several commenters suggested that the rule establish time frames for the conduct of inspections and inventories. One commenter suggested that the repository inspect the physical plant at least annually and that the Federal agency inspect the repository at least every three years. Another commenter suggested that a maximum time period such as three years be specified for all inspections. One commenter was concerned that, if a term of years is not stated in the rule, there is opportunity for Federal agencies, through neglect, to permanently relinquish their curatorial responsibilities. Another commenter felt that the frequency and methods for conducting inspections and inventories should not be based on the nature and content of the collection, but did not suggest alternative criteria for determining the frequency and methods.

None of those suggestions have been adopted because the frequency of inspections should be determined on a case by case basis. Factors that would affect the frequency of inspections would include the nature and content of the collection, any terms and conditions developed in regard to collections from Indian lands and to collections from public lands that contain religious remains, the security and environmental control features of the repository, and the repository's standard inspection and inventory practices. By requiring the Federal Agency Official and the Repository Official to agree, in writing, on the frequency and methods, the regulation removes any opportunity for a Federal agency, through neglect, to relinquish its curatorial responsibilities.

Two commenters provided technical advice on the conduct of inspections and inventories. One noted that fragile or nonlithic materials should be closely monitored because they are susceptible to deterioration and damage. The other noted that more frequent handling of fragile materials during inspections and inventories would accelerate the breakdown of the materials. The commenter recommended that material remains be viewed but handled as little as possible during such inspections. These comments have been incorporated into new §§ 79.11 (d)(3) and (d)(4).

One commenter recommended that Federal agencies pass management checks and responsibilities to one Federal agency with curatorial experience, such as the National Park Service. Another commenter asked an Office of Curatorial Inspection would be established to oversee inspections. These suggestions have not been adopted because Federal historic preservation statutes and regulations clearly indicate that Federal agencies have the responsibility to manage and preserve historic properties, including collections, under their control or jurisdiction. However, when two or more Federal agencies deposit collections in the same repository, the Federal Agency Officials should enter into interagency agreements for the purpose of coordinating inspections and inventories. Such cooperation should reduce the number of inspections that are conducted by both Federal agency and repository staff. It also should ensure consistency in the conduct of inspections and inventories. Section 79.11(e) of the final rule, which was § 79.9(d) of the proposed rule, recommends that Federal agencies enter into interagency agreements for such purposes.

Two commenters agreed that it was desirable to encourage Federal agencies to cooperate with each other in conducting inspections. However, one commenter stated that it may be difficult to accomplish because agencies may not know that a repository contains collections that are owned by other Federal agencies. In addition, the same commenter stated that agencies that have existing agreements with repositories may be reluctant to change either the inspection period or inventory standards.

Section 79.11(e) sets forth a recommendation, not a requirement, to coordinate inspections and inventories. To the extent possible, coordinating inspections and inventories would be economically advantageous to Federal agencies and repositories alike because it would reduce staff time and travel associated with such activities. We would encourage Federal agencies to ask repositories if other federally-owned or administered collections are in their care, and to modify existing agreements, as appropriate, with those repositories to coordinate inspections and inventories.

Another commenter recommended including reference to Indian tribes and individuals as being qualified to conduct the inspections required of Federal agencies pursuant to § 79.11(e). The inspections referenced in this paragraph are to determine whether the repository substantially complies with the minimum standards set forth in this part and to evaluate the performance of the repository in providing curatorial services under any contract, memorandum, agreement or other appropriate written instrument. As previously mentioned, those inspections cannot be delegated to non-Federal parties, although non-Federal parties are not excluded from participating. The commenter's concern that Indian tribes and individuals be able to participate in inspections is acknowledged in §§ 79.11(b)(10)(ii) and (b)(10)(iii).

Section 79.10 Funding (Renumbered Section 79.7; Retitled "Methods To Fund Curatorial Services")

Many commenters identified insufficient funding by Federal agencies as the major obstacle toward providing adequate, long-term care of collections. Most commenters recommended that explicit language be added to this section of the rule stating that Federal agencies have an affirmative responsibility to provide sufficient funds

to cover curatorial costs for their collections.

We agree that Federal agencies generally have provided insufficient monies to carry out curatorial activities, whether they use Federal or non-Federal repositories. Clearly, Federal agencies may fund a variety of curatorial activities using monies appropriated annually by the U.S. Congress, subject to any specific statutory authorities or limitations applicable to a particular agency. Sections 79.7(a)(1) through (a)(6) contain a non-inclusive list of curatorial activities that may be funded, as appropriate, by Federal agencies.

Three activities that were not contained in the proposed rule have been added: (1) Activities associated with the conduct of inspections and inventories required under the rulemaking; (2) activities that would assist repositories in eliminating deficiencies; and (3) activities associated with the removal of collections from repositories that can no longer provide adequate long-term curatorial services. Providing funds or services to assist deficient non-Federal repositories oftentimes may be more economical than moving a collection, particularly when the repositories have been storing preexisting collections for long periods of time at no cost to the U.S. Government.

Section 79.7(b) of the final rule states that Federal agencies may charge licensees and permittees reasonable costs for curatorial activities as a condition to the issuance of a Federal license or permit. One commenter suggested that licensees and permittees be required to provide for curation in lieu of paying for reasonable curatorial costs. This suggestion has not been adopted because it would not have been in keeping with statutory language or Congressional intent.[3]

Another commenter suggested that contractors be required to pay reasonable costs for curatorial activities as a condition to the issuance of the contract. When the U.S. Government contracts for archeological investigations in connection with a Federal action, the contract should provide for curation of the resulting collection when alternative arrangements are not available (*e.g.*, a Federal agency may have a preexisting agreement with a specific repository in which the parties agree that the repository will privide curatorial services for collections generated in the future). In any event, the suggestion is beyond on scope of this rulemaking.

Repositories also have a responsibility to ensure that they have sufficient financial resources to carry out agreements that they enter into with Federal agencies to provide curatorial services. This is especially important when the agree to provide such services at no cost to the U.S. Government. Section 79.7(c) clarifies that when a Federal agency deposits a collection in a repository that agrees to provide curatorial services at no cost to the U.S. Government, the Federal agency should ensure that the repository has sufficient financial resources to support its operations and any needed improvements.

Several commenters indicated that a single, lump sum payment to a repository for curatorial services in perpetuity often only covers initial processing, cataloging and accessioning. In response, some repositories have raised their fees while others have refused to take new collections without a contract or other written agreement for annual payments. Regardless of whether a single, lump sum payment or annual payments are made, Federal agencies must ensure that sufficient funds are provided to repositories to pay for long-term curatorial services.

In response to the concerns voiced by commenters, a new § 79.7(d) has been added to the final rule which states that funds for curatorial services should include costs for initially processing, cataloging, accessioning, storing, inspecting, inventorying, maintaining, and conserving collections. Sections 79.7 (d)(1) and (d)(2), which appeared at §§ 79.10 (f) and (g) in the proposed rule, identify those costs that should be included in project planning and mitigation budgets. A new § 79.7(d)(3) identifies those costs that should be included in annual operating budgets.

Section 79.7(e), which was § 79.10(h) in the proposed rule, states how the one percent limitation on data recovery contained in the Archeological and Historic Preservation Act (16 U.S.C. 469–469*c*) may be waived. One commenter felt that curatorial costs should be included within one percent limitation. We agree. However, section 208(e) of the National Historic Preservation Act Amendments does authorize Federal agencies to waive the limitation in certain instances.[4] This paragraph merely restates the authority available to Federal agencies to waive the one percent limitation.

One commenter recommended that the rule be revised to contain a provision establishing a central fund to defray curatorial costs. Operating under the misconception that most repositories economically profit from caring Federal collections, the commenter suggested that monies for the fund could be raised by charging an application fee or by requiring a repository to post a performance bond.

We agree that one way of financing curatorial costs would be to establish a central fund. We doubt, however, that sufficient monies would be generated for such a fund by charging an application fee or by requiring that a bond be posted. Moreover, through enactment of the various Federal historic preservation statutes, the U.S. Congress clearly has directed Federal agencies to include preservation costs in project budgets and annual operating budgets, and to charge reasonable costs to licensees and permittees. Therefore, the recommendation has not been adopted.

Another commenter felt that the regulation would cause a significant amount of additional funds to be expended on staffing and on the construction of facilities. This rulemaking does not place any new requirements on Federal agencies. Federal agencies currently are responsible for ensuring that collections resulting from Federal projects and programs are preserved for future research and for the development of public interpretive programs. There is not question that providing for adequate long-term curatorial services will require the expenditure of funds. This rulemaking establishes standards, procedures and guidelines to be followed by Federal agencies to ensure that collections are preserved in an effective and efficient manner. Section 79.6 of the rulemaking identifies a variety of methods, some which are less costly than others, that are available to a Federal agency to secure curatorial services. In addition, §§ 79.6(b) and 79.11(e) in the final rule provide suggestions (e.g., consolidating

[3] Section 110(g) of NHPA authorizes Federal agencies to charge reasonable costs to Federal licensees and permittees as a condition to the issuance of a license or permit. In addition, section 208(2) of the National Historic Preservation Act Amendments (16 U.S.C. 470) authorizes Federal agencies to charge reasonable costs for identification, surveys, evluation, and data recovery to Federal licensees and permittees as a condition to the issuance of such license or permit. Reasonable costs are described on pages 36 and 40 of House Report No. 96–1457 as meaning at a rate commensurate with the licensee's or permittee's interest in or benefit from the undertaking that affects historic properties.

[4] House Report No. 96–1457 states that the U.S. Congress expects data recovery costs to exceed the one percent limitation only in unusual cases. Examples provided on page 40 of the report include cases where rich concentrations of historic materials will be destroyed or where the project costs are not commensurate with the necessary data recovery.

collections or coordinating inspections) that would further reduce curatorial costs.

Appendix A—Example of a Short-term Loan Agreement (Renumbered App. C; Retitled "Example of a Short-term Loan Agreement for a Federally-owned Collection")

At the suggestion of one commenter, the appendices have been reordered to reflect the natural order of events (*i.e.*, a repository would sign a memorandum of understanding with a Federal agency to provide curatorial services before it would loan items in collection). As a result, the short-term loan agreement appears in appendix C to the final rulemaking.

The short-term loan agreement remains relatively unchanged, having received few comments.

One commenter felt that the collection's owner should approve each request for short-term loan, publication and exhibition. This suggestion has not been incorporated because such involvement would create unnecessary paperwork for the Federal Agency Official, any non-Federal owner and the repository, and would create undue delays for the intended borrower. Section 79.8(j) of this final rulemaking requires that any terms and conditions regarding the loan, study, exhibition or other use of a collection be included in any contract, memorandum of agreement for curatorial services. The short-term loan agreement has been revised to indicate that those terms and conditions should be attached to the loan agreement.

The same commenter asked for examples of appropriate time limits for short-term loans and for clarification on who would collect insurance. Short-term loans generally should not exceed one year in duration, although the length of loans would be dependent on the purpose of the loan. The certificate of insurance should stipulate the recipient of any monies collected under an insurance policy. Generally speaking, the owner of the collection would be the recipient. When a collection is damaged rather than lost, monies collected under any insurance policy should be used to conserve the damaged collection, as directed by the Federal Agency Official.

One commenter recommended that a new appendix be added that presents an example of a deed of gift. A deed of gift would be used when a Federal or federally authorized archeological project takes place on non-public lands, and the non-Federal owner of the materials remains donates or otherwise transfers title to the U.S. Government. In response to this comment, an example of a deed of gift has been added. It appears in appendix A to the final rulemaking.

Appendix B—Example of a Memorandum of Understanding for Curatorial Services (Retitled "Example of a Memorandum of Understanding for Curatorial Services for a Federally-Owned Collection")

Few comments were made on the example of a memorandum of understanding for curatorial serivces. As such, the memorandum remains relatively unchanged.

One commenter felt that the memorandum of understanding appeared to be far too extensive and cumbersome. We disagree. The memorandum is an example of a typical agreement between a Federal agency and a repository for curatorial services.

One commenter asked if a Federal agency and a repository would have to enter into a new memorandum each time the Federal agency wanted to deposit another collection in the repository. To avoid this, the commenter recommended that the memorandum stipulate volume parameters in lieu of the site numbers of particular sites so that additional collections could be deposited in the future.

This suggestion would be appropriate in those instances when a Federal agency wanted to enter into an open ended agreement with a repository for curatorial services for an as yet undetermined number of collections. The example memorandum presented in Appendix B is merely illustrative. As noted in § 79.1 of this rulemaking, the example memorandum should be revised according to the needs of the Federal agency, the nature and content of the collection, and the type of legal instrument being used.

Two commenters recommended that the memorandum reference qualifications or positions to be assigned responsibility for the collection rather than specify staff by name, thereby avoiding the need to amend the memorandum each time personnel changed. Paragraphs 1(c) and 2(b) of the memorandum have been revised accordingly.

One commenter suggested expanding paragraph 1(i) of the memorandum in the final rule to clarify that the views of pertinent Native American organizations must be considered when requests are made to the repository to borrow religious remains or to study human skeletal remains. Section 79.8 of this rulemaking requires that any contract, memorandum or agreement for curatorial services include certain terms and conditions, including those that may have been developed pursuant to § -.7 of ARPA's implementing regulations concerning archeological resources on public lands that the Federal land manager has determined are of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such lands. Such terms and conditions either would be identified within the body of the contract, memorandum or agreement for curatorial services, or would be appended to it. In the example memorandum, they are appended as attachment C. Either method would be appropriate.

In regard to paragraph 1(j) in the memorandum in the final rule, one commenter stated that it would be impossible for a repository to guarantee that a collection would never be lost, stolen, destroyed or damaged. The commenter recommended adding a disclaimer for acts of God, accidents or other unanticipated circumstances. We agree that a repository would not be liable for actions not under its control. The purpose of the paragraph is to ensure that a repository does not take any action or allow any person to take any action that would cause a collection to be lost, stolen, destroyed or damaged.

Another commenter asked that a statement be added to the memorandum that instructs the repository not to repatriate any of a collection without the prior written permission of the Federal Agency Official, and to redirect any request for repatriation of any of the collection to the Federal Agency Official. This has been reflected in paragraph 1(j) of the memorandum in the final rule.

Authorship

The author of this rulemaking is Michele C. Aubry (Archeologist and Program Analyst) in the office of the Departmental Consulting Archeologist, National Park Service, Washington, DC.

Compliance With Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Compliance With the Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With the National Environmental Policy Act

Federal agencies that conduct or authorize archeological investigations are required by law to maintain and preserve the resulting collections of artifacts, specimens and associated records. Issuance of this document will result in more consistent, systematic and professional care of those collections. The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment under the National Environmental Policy Act (42 U.S.C. 4321–4347). In addition, the National Park Service has determined that this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act by Departmental regulations in 516 DM 2. As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 79

Archeology, Archives and records, Historic preservation, Indians-lands, Museums, Public lands.

Dated: June 28, 1990.

Constance B. Harriman,

Assistant Secretary for Fish and Wildlife and Parks.

For the reasons set forth in the preamble, title 36, chapter I of the Code of Federal Regulations is amended by adding a new part 79 to read as follows:

PART 79—CURATION OF FEDERALLY-OWNED AND ADMINISTERED ARCHEOLOGICAL COLLECTIONS

Sec.

Authority: 15 U.S.C. 470*aa-mm*, 16 U.S.C. 470 *et seq.*

§ 79.1 Purpose.

(a) The regulations in this part establish definitions, standards, procedures and guidelines to be followed by Federal agencies to preserve collections of prehistoric and historic material remains, and associated records, recovered under the authority of the Antiquities Act (16 U.S.C. 431–433), the Reservoir Salvage Act (16 U.S.C. 469–469*c*), section of the National Historic Preservation Act (16 U.S.C. 470*h*–2) or the Archaeological Resources Protection Act (16 U.S.C. 470*aa-mm*). They establish:

(1) Procedures and guidelines to manage and preserve collections;

(2) Terms and conditions for Federal agencies to include in contracts, memoranda, agreements or other written instruments with repositories for curatorial services;

(3) Standards to determine when a repository has the capability to provide long-term curatorial services; and

(4) Guidelines to provide access to, loan and otherwise use collections.

(b) The regulations in this part contain three appendices that provide additional guidance for use by the Federal Agency Official.

(1) Appendix A to these regulations contains an example of an agreement between a Federal agency and a non-Federal owner of material remains who is donating the remains to the Federal agency.

(2) Appendix B to these regulations contains an example of a memorandum of understanding between a Federal agency and a repository for long-term curatorial services for a federally-owned collection.

(3) Appendix C to these regulations contains an example of an agreement between a repository and a third party for a short-term loan of a federally-owned collection (or a part thereof).

(4) The three appendices are meant to illustrate how such agreements might appear. They should be revised according to the:

(i) Needs of the Federal agency and any non-Federal owner;

(ii) Nature and content of the collection; and

(iii) Type of contract, memorandum, agreement or other written instrument being used.

(5) When a repository has preexisting standard forms (e.g., a short-term loan form) that are consistent with the regulations in this part, those forms may be used in lieu of developing new ones.

§ 79.2 Authority.

(a) The regulations in this part are promulgated pursuant to section 101(a)(7)(A) of the National Historic Preservation Act (16 U.S.C. 470*a*) which requires that the Secretary of the Interior issue regulations ensuring that significant prehistoric and historic artifacts, and associated records, recovered under the authority of section of that Act (16 U.S.C. 470*h*–2), the Reservoir Salvage Act (16 U.S.C. 469–469*c*) and the Archeological Resources Protection Act (16 U.S.C. 470*aa-mm*) are deposited in an institution with adequate long-term curatorial capabilities.

(b) In addition, the regulations in this part are promulgated pursuant to section 5 of the Archeological Resources Protection Act (16 U.S.C. 470*dd*) which gives the Secretary of the Interior discretionary authority to promulgate regulations for the:

(1) Exchange, where appropriate, between suitable universities, museums or other scientific or educational institutions, of archeological resources recovered from public and Indian lands under that Act; and

(2) Ultimate disposition of archeological resources recovered under that Act (16 U.S.C. 470*aa-mm*), the Antiquities Act (16 U.S.C. 431–433) or the Reservoir Salvage Act (16 U.S.C. 469–469*c*).

(3) It further states that any exchange or ultimate disposition of resources excavated or removed from Indian lands shall be subject to the consent of the Indian or Indian tribe that owns or has jurisdiction over such lands.

§ 79.3 Applicability.

(a) The regulations in this part apply to collections, as defined in § 79.4 of this part, that are excavated or removed under the authority of the Antiquities Act (16 U.S.C. 431–433), the Reservoir Salvage Act (16 U.S.C. 469–469*c*), section of the National Historic Preservation Act (16 U.S.C. 470*h*-2) or the Archeological Resources Act (16 U.S.C. 470*aa-mm*). Such collections generally include those that are the result of a prehistoric or historic resource survey, excavation or other study conducted in connection with a Federal action, assistance, license or permit.

(1) Material remains, as defined in § 79.4 of this part, that are excavated or removed from a prehistoric or historic resource generally are the property of the landowner.

(2) Data that are generated as a result of a prehistoric or historic resource survey, excavation or other study are recorded in associated records, as defined in § 79.4 of this part. Associated records that are prepared or assembled in connection with a Federal or federally authorized prehistoric or historic resource survey, excavation or other study are the property of the U.S. Government, regardless of the location of the resource.

(b) The regulations in this part apply to preexisting and new collections that meet the requirements of paragraph (a) of this section. However, the regulations shall not be applied in a manner that would supersede or breach material terms and conditions in any contract, grant, license, permit, memorandum, or agreement entered into by or on behalf of a Federal agency prior to the effective date of this regulation.

(c) Collections that are excavated or removed pursuant to the Antiquities Act (16 U.S.C. 431–433) remain subject to that Act, the Act's implementing rule (43 CFR part 3), and the terms and conditions of the pertinent Antiquities Act permit or other approval.

(d) Collections that are excavated or removed pursuant to the Archaeological Resources Protection Act (16 U.S.C. 470*aa–mm*) remain subject to that Act, the Act's implementing rules (43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229), and the terms and conditions of the pertinent Archaeological Resources Protection Act permit or other approval.

(e) Any repository that is providing curatorial services for a collection subject to the regulations in this part must possess the capability to provide adequate long-term curatorial services, as set forth in § 79.9 of this part, to safeguard and preserve the associated records and any material remains that are deposited in the repository.

§ 79.4 Definitions.

As used for purposes of this part:

(a) *Collection* means material remains that are excavated or removed during a survey, excavation or other study of a prehistoric or historic resource, and associated records that are prepared or assembled in connection with the survey, excavation or other study.

(1) *Material remains* means artifacts, objects, specimens and other physical evidence that are excavated or removed in connection with efforts to locate, evaluate, document, study, preserve or recover a prehistoric or historic resource. Classes of material remains (and illustrative examples) that may be in a collection include, but are not limited to:

(i) Components of structures and features (such as houses, mills, piers, fortifications, raceways, earthworks and mounds);

(ii) Intact or fragmentary artifacts of human manufacture (such as tools, weapons, pottery, basketry and textiles);

(iii) Intact or fragmentary natural objects used by humans (such as rock crystals, feathers and pigments);

(iv) By-products, waste products or debris resulting from the manufacture or use of man-made or natural materials (such as slag, dumps, cores and debitage);

(v) Organic material (such as vegetable and animal remains, and coprolites);

(vi) Human remains (such as bone, teeth, mummified flesh, burials and cremations);

(vii) Components of petroglyphs, pictographs, intaglios or other works of artistic or symbolic representation;

(viii) Components of shipwrecks (such as pieces of the ship's hull, rigging, armaments, apparel, tackle, contents and cargo);

(ix) Environmental and chronometric specimens (such as pollen, seeds, wood, shell, bone, charcoal, tree core samples, soil, sediment cores, obsidian, volcanic ash, and baked clay); and

(x) Paleontological specimens that are found in direct physical relationship with a prehistoric or historic resource.

(2) *Associated records* means original records (or copies thereof) that are prepared, assembled and document efforts to locate, evaluate, record, study, preserve or recover a prehistoric or historic resource. Some records such as field notes, artifact inventories and oral histories may be originals that are prepared as a result of the field work, analysis and report preparation. Other records such as deeds, survey plats, historical maps and diaries may be copies of original public or archival documents that are assembled and studied as a result of historical research. Classes of associated records (and illustrative examples) that may be in a collection include, but are not limited to:

(i) Records relating to the identification, evaluation, documentation, study, preservation or recovery of a resource (such as site forms, field notes, drawings, maps, photographs, slides, negatives, films, video and audio cassette tapes, oral histories, artifact inventories, laboratory reports, computer cards and tapes, computer disks and diskettes, printouts of computerized data, manuscripts, reports, and accession, catalog and inventory records);

(ii) Records relating to the identification of a resource using remote sensing methods and equipment (such as satellite and aerial photography and imagery, side scan sonar, magnetometers, subbottom profilers, radar and fathometers);

(iii) Public records essential to understanding the resource (such as deeds, survey plats, military and census records, birth, marriage and death certificates, immigration and naturalization papers, tax forms and reports);

(iv) Archival records essential to understanding the resource (such as historical maps, drawings and photographs, manuscripts, architectural and landscape plans, correspondence, diaries, ledgers, catalogs and receipts); and

(v) Administrative records relating to the survey, excavation or other study of the resource (such as scopes of work, requests for proposals, research proposals, contracts, antiquities permits, reports, documents relating to compliance with section 106 of the National Historic Preservation Act (16 U.S.C. 470*f*), and National Register of Historic Places nomination and determination of eligibility forms).

(b) *Curatorial services.* Providing curatorial services means managing and preserving a collection according to professional museum and archival practices, including, but not limited to:

(1) Inventorying, accessioning, labeling and cataloging a collection;

(2) Identifying, evaluating and documenting a collection;

(3) Storing and maintaining a collection using appropriate methods and containers, and under appropriate environmental conditions and physically secure controls;

(4) Periodically inspecting a collection and taking such actions as may be necessary to preserve it;

(5) Providing access and facilities to study a collection; and

(6) Handling, cleaning, stabilizing and conserving a collection in such a manner to preserve it.

(c) *Federal Agency Official* means any officer, employee or agent officially representing the secretary of the department or the head of any other agency or instrumentality of the United States having primary management authority over a collection that is subject to this part.

(d) *Indian lands* has the same meaning as in § –.3(e) of uniform regulations 43 CFR part 7, 36 CFR part

296, 18 CFR part 1312, and 32 CFR part 229.

(e) *Indian tribe* has the same meaning as in § –.3(f) of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229.

(f) *Personal property* has the same meaning as in 41 CFR 100–43.001–14. Collections, equipment (e.g., a specimen cabinet or exhibit case), materials and supplies are classes of personal property.

(g) *Public lands* has the same meaning as in § –.3(d) of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229.

(h) *Qualified museum professional* means a person who possesses knowledge, experience and demonstrable competence in museum methods and techniques appropriate to the nature and content of the collection under the person's management and care, and commensurate with the person's duties and responsibilities. Standards that may be used, as appropriate, for classifying positions and for evaluating a person's qualifications include, but are not limited to, the following:

(1) The Office of Personnel Management's "Position Classification Standards for Positions under the General Schedule Classification System" (U.S. Government Printing Office, stock No. 906—028–00000–0 (1981)) are used by Federal agencies to determine appropriate occupational series and grade levels for positions in the Federal service. Occupational series most commonly associated with museum work are the museum curator series (GS/GM–1015) and the museum technician and specialist series (GS/GM–1016). Other scientific and professional series that may have collateral museum duties include, but are not limited to, the archivist series (GS/GM–1420), the archeologist series (GS/GM–193), the anthropologist series (GS/GM–190), and the historian series (GS/GM–170). In general, grades GS–9 and below are assistants and trainees while grades GS–11 and above are professionals at the full performance level. Grades GS–11 and above are determined according to the level of independent professional responsibility, degree of specialization and scholarship, and the nature, variety, complexity, type and scope of the work.

(2) The Office of Personnel Management's "Qualification Standards for Positions under the General Schedule (Handbook X–118)" (U.S. Government Printing Office, stock No. 906–030–00000–4 (1986)) establish educational, experience and training requirements for employment with the Federal Government under the various occupational series. A graduate degree in museum science or applicable subject matter, or equivalent training and experience, and three years of professional experience are required for museum positions at grades GS–11 and above.

(3) The "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716, Sept. 29, 1983) provide technical advice about archeological and historic preservation activities and methods for use by Federal, State and local Governments and others. One section presents qualification standards for a number of historic preservation professions. While no standards are presented for collections managers, museum curators or technicians, standards are presented for other professions (i.e., historians, archeologists, architectural historians, architects, and historic architects) that may have collateral museum duties.

(4) Copies of the Office of Personnel Management's standards, including subscriptions for subsequent updates, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Copies may be inspected at the Office of Personnel Management's Library, 1900 E Street NW., Washington, DC, at any regional or area office of the Office of Personnel Management, at any Federal Job Information Center, and at any personnel office of any Federal agency. Copies of the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" are available at no charge from the Interagency Resources Division, National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

(i) *Religious remains* means material remains that the Federal Agency Official has determined are of traditional religious or sacred importance to an Indian tribe or other group because of customary use in religious rituals or spiritual activities. The Federal Agency Official makes this determination in consultation with appropriate Indian tribes or other groups.

(j) *Repository* means a facility such as a museum, archeological center, laboratory or storage facility managed by a university, college, museum, other educational or scientific institution, a Federal, State of local Government agency or Indian tribe that can provide professional, systematic and accountable curatorial services on a long-term basis.

(k) *Repository Official* means any officer, employee or agent officially representing the repository that is providing curatorial services for a collection that is subject to this part.

(l) *Tribal Official* means the chief executive officer or any officer, employee or agent officially representing the Indian tribe.

§ 79.5 Management and preservation of collections.

The Federal Agency Official is responsible for the long-term management and preservation of preexisting and new collections subject to this part. Such collections shall be placed in a repository with adequate long-term curatorial capabilities, as set forth in § 79.9 of this part, appropriate to the nature and content of the collections.

(a) *Preexisting collections.* The Federal Agency Official is responsible for ensuring that preexisting collections, meaning those collections that are placed in repositories prior to the effective date of this rule, are being properly managed and preserved. The Federal Agency Official shall identify such repositories, and review and evaluate the curatorial services that are being provided to preexisting collections. When the Federal Agency Official determines that such a repository does not have the capability to provide adequate long-term curatorial services, as set forth in § 79.9 of this part, the Federal Agency Official may either:

(1) Enter into or amend an existing contract, memorandum, agreement or other appropriate written instrument for curatorial services for the purpose of:

(i) Identifying specific actions that shall be taken by the repository, the Federal agency or other appropriate party to eliminate the inadequacies;

(ii) Specifying a reasonable period of time and a schedule within which the actions shall be completed; and

(iii) Specifying any necessary funds or services that shall be provided by the repository, the Federal agency or other appropriate party to complete the actions; or

(2) Remove the collections from the repository and deposit them in another repository that can provide such services in accordance with the regulations in this part. Prior to moving any collection that is from Indian lands, the Federal Agency Official must obtain the written consent of the Indian landowner and the Indian tribe having jurisdiction over the lands.

(b) *New collections.* The Federal Agency Official shall deposit a collection in a repository upon determining that:

(1) The repository has the capability to provide adequate long-term curatorial services, as set forth in § 79.9 of this part;

(2) The repository's facilities, written curatorial policies and operating procedures are consistent with the regulations in this part;

(3) The repository has certified, in writing, that the collection shall be cared for, maintained and made accessible in accordance with the regulations in this part and any terms and conditions that are specified by the Federal Agency Official;

(4) When the collection is from Indian lands, written consent to the disposition has been obtained from the Indian landowner and the Indian tribe having jurisdiction over the lands; and

(5) The initial processing of the material remains (including appropriate cleaning, sorting, labeling, cataloging, stabilizing and packaging) has been completed, and associated records have been prepared and organized in accordance with the repository's processing and documentation procedures.

(c) *Retention of records by Federal agencies.* The Federal Agency Official shall maintain administrative records on the disposition of each collection including, but not limited to:

(1) The name and location of the repository where the collection is deposited;

(2) A copy of the contract, memorandum, agreement or other appropriate written instrument, and any subsequent amendments, between the Federal agency, the repository and any other party for curatorial services;

(3) A catalog list of the contents of the collection that is deposited in the repository;

(4) A list of any other Federal personal property that is furnished to the repository as a part of the contract, memorandum, agreement or other appropriate written instrument for curatorial services;

(5) Copies of reports documenting inspections, inventories and investigations of loss, damage or destruction that are conducted pursuant to § 79.11 of this part; and

(6) Any subsequent permanent transfer of the collection (or a part thereof) to another repository.

§ 79.6 Methods to secure curatorial services.

(a) Federal agencies may secure curatorial services using a variety of methods, subject to Federal procurement and property management statutes, regulations, and any agency-specific statutes and regulations on the management of museum collections. Methods that may be used by Federal agencies to secure curatorial services include, but are not limited to:

(1) Placing the collection in a repository that is owned, leased or otherwise operated by the Federal agency;

(2) Entering into a contract or purchase order with a repository for curatorial services;

(3) Entering into a cooperative agreement, a memorandum of understanding, a memorandum of agreement or other agreement, as appropriate, with a State, local or Indian tribal repository, a university, museum or other scientific or educational institution that operates or manages a repository, for curatorial services;

(4) Entering an interagency agreement with another Federal agency for curatorial services;

(5) Transferring the collection to another Federal agency for preservation; and

(6) For archeological activities permitted on public or Indian lands under the Archaeological Resources Protection Act (16 U.S.C. 470 *aa–mm*), the Antiquities Act (16 U.S.C. 431–433) or other authority, requiring the archeological permittee to provide for curatorial services as a condition to the issuance of the archeological permit.

(b) *Guidelines for selecting a repository.* (1) When possible, the collection should be deposited in a repository that:

(i) Is in the State of origin;

(ii) Stores and maintains other collections from the same site or project location; or

(iii) Houses collections from a similar geographic region or cultural area.

(2) The collection should not be subdivided and stored at more than a single repository unless such subdivision is necessary to meet special storage, conservation or research needs.

(3) Except when non-federally-owned material remains are retained and disposed of by the owner, material remains and associated records should be deposited in the same repository to maintain the integrity and research value of the collection.

(c) *Sources for technical assistance.* The Federal Agency Official should consult with persons having expertise in the management and preservation of collections prior to preparing a scope of work or a request for proposals for curatorial services. This will help ensure that the resulting contract, memorandum, agreement or other written instrument meets the needs of the collection, including any special needs in regard to any religious remains. It also will aid the Federal Agency Official in evaluating the qualifications and appropriateness of a repository, and in determining whether the repository has the capability to provide adequate long-term curatorial services for a collection. Persons, agencies, institutions and organizations that may be able to provide technical assistance include, but are not limited to the:

(1) Federal agency's Historic Preservation Officer;

(2) State Historic Preservation Officer;

(3) Tribal Historic Preservation Officer;

(4) State Archeologist;

(5) Curators, collections managers, conservators, archivists, archeologists, historians and anthropologists in Federal and State Government agencies and Indian tribal museum;

(6) Indian tribal elders and religious leaders;

(7) Smithsonian Institution;

(8) American Association of Museums; and

(9) National Park Service.

§ 79.7 Methods to fund curatorial services.

A variety of methods are used by Federal agencies to ensure that sufficient funds are available for adequate, long-term care and maintenance of collections. Those methods include, but are not limited to, the following:

(a) Federal agencies may fund a variety of curatorial activities using monies appropriated annually by the U.S. Congress, subject to any specific statutory authorities or limitations applicable to a particular agency. As appropriate, curatorial activities that may be funded by Federal agencies include, but are not limited to:

(1) Purchasing, constructing, leasing, renovating, upgrading, expanding, operating, and maintaining a repository that has the capability to provide adequate long-term curatorial services as set forth in § 79.9 of this part;

(2) Entering into and maintaining on a cost-reimbursable or cost-sharing basis a contract, memorandum, agreement, or other appropriate written instrument with a repository that has the capability to provide adequate long-term curatorial services as set forth in § 79.9 of this part;

(3) As authorized under section 110(g) of the National Historic Preservation Act (16 U.S.C. 470*h*–2), reimbursing a grantee for curatorial costs paid by the grantee as a part of the grant project;

(4) As authorized under section 110(g) of the National Historic Preservation Act (16 U.S.C. 470*h*–2), reimbursing a State for curatorial costs paid by the State agency to carry out the historic

preservation responsibilities of the Federal agency;

(5) Conducting inspections and inventories in accordance with § 79.11 of this part; and

(6) When a repository that is housing and maintaining a collection can no longer provide adequate long-term curatorial services, as set forth in § 79.9 of this part, either:

(i) Providing such funds or services as may be agreed upon pursuant to § 79.5(a)(1) of this part to assist the repository in eliminating the deficiencies; or

(ii) Removing the collection from the repository and depositing it in another repository that can provide curatorial services in accordance with the regulations in this part.

(b) As authorized under section 110(g) of the National Historic Preservation Act (16 U.S.C. 470*h*–2) and section 208(2) of the National Historic Preservation Act Amendments (16 U.S.C. 469*c*–2), for federally licensed or permitted projects or programs, Federal agencies may charge licensees and permittees reasonable costs for curatorial activities associated with identification, surveys, evaluation and data recovery as a condition to the issuance of a Federal license or permit.

(c) Federal agencies may deposit collections in a repository that agrees to provide curatorial services at no cost to the U.S. Government. This generally occurs when a collection is excavated or removed from public or Indian lands under a research permit issued pursuant to the Antiquities Act (16 U.S.C. 431–433) or the Archaeological Resources Protection Act (16 U.S.C. 470*aa–mm*). A repository also may agree to provide curatorial services as a public service or as a means of ensuring direct access to a collection for long-term study and use. Federal agencies should ensure that a repository that agrees to provide curatorial services at no cost to the U.S. Government has sufficient financial resources to support its operations and any needed improvements.

(d) Funds provided to a repository for curatorial services should include costs for initially processing, cataloging and accessioning the collection as well as costs for storing, inspecting, inventorying, maintaining, and conserving the collection on a long-term basis.

(1) Funds to initially process, catalog and accession a collection to be generated during identification and evaluation surveys should be included in project planning budgets.

(2) Funds to initially process, catalog and accession a collection to be generated during data recovery operations should be included in project mitigation budgets.

(3) Funds to store, inspect, inventory, maintain and conserve a collection on a long-term basis should be included in annual operating budgets.

(e) When the Federal Agency Official determines that data recovery costs may exceed the one percent limitation contained in the Archeological and Historic Preservation Act (16 U.S.C. 469*c*), as authorized under section 208(3) of the National Historic Preservation Act Amendments (16 U.S.C. 469*c*–2), the limitation may be waived, in appropriate cases, after the Federal Agency Official has:

(1) Obtained the concurrence of the Secretary of the U.S. Department of the Interior by sending a written request to the Departmental Consulting Archeologist, National Park Service, P.O. Box 37127, Washington, DC 20013–7127; and

(2) Notified the Committee on Energy and Natural Resources of the U.S. Senate and the Committee on Interior and Insular Affairs of the U.S. House of Representatives.

§ 79.8 Terms and conditions to include in contracts, memoranda and agreements for curatorial services.

The Federal Agency Official shall ensure that any contract, memorandum, agreement or other appropriate written instrument for curatorial services that is entered into by or on behalf of that Official, a Repository Official and any other appropriate party contains the following:

(a) A statement that identifies the collection or group of collections to be covered and any other U.S. Government-owned personal property to be furnished to the repository;

(b) A statement that identifies who owns and has jurisdiction over the collection;

(c) A statement of work to be performed by the repository;

(d) A statement of the responsibilities of the Federal agency and any other appropriate party;

(e) When the collection is from Indian lands:

(1) A statement that the Indian landowner and the Indian tribe having jurisdiction over the lands consent to the disposition; and

(2) Such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands;

(f) When the collection is from a site on public lands that the Federal Agency Official has determined is of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such lands, such terms and conditions as may have been developed pursuant to § –.7 of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229;

(g) The term of the contract, memorandum or agreement; and procedures for modification, suspension, extension, and termination;

(h) A statement of costs associated with the contract, memorandum or agreement; the funds or services to be provided by the repository, the Federal agency and any other appropriate party; and the schedule for any payments;

(i) Any special procedures and restrictions for handling, storing, inspecting, inventorying, cleaning, conserving, and exhibiting the collection;

(j) Instructions and any terms and conditions for making the collection available for scientific, educational and religious uses, including procedures and criteria to be used by the Repository Official to review, approve or deny, and document actions taken in response to requests for study, laboratory analysis, loan, exhibition, use in religious rituals or spiritual activities, and other uses. When the Repository Official to approve consumptive uses, this should be specified; otherwise, the Federal Agency Official should review and approve consumptive uses. When the repository's existing operating procedures and criteria for evaluating requests to use collections are consistent with the regulations in this part, they may be used, after making any necessary modifications, in lieu of developing new ones;

(k) Instructions for restricting access to information relating to the nature, location and character of the prehistoric or historic resource from which the material remains are excavated or removed;

(l) A statement that copies of any publications resulting from study of the collection are to be provided to the Federal Agency Official and, when the collection is from Indian lands, to the Tribal Official and the Tribal Historic Preservation Officer, if any, of the Indian tribe that owns or has jurisdiction over such lands;

(m) A statement that specifies the frequency and methods for conducting and documenting the inspections and inventories stipulated in § 79.11 of this part;

(n) A statement that the Repository Official shall redirect any request for transfer or repatriation of a federally-owned collection (or any part thereof) to the Federal Agency Official, and redirect any request for transfer or

repatriation of a federally administered collection (or any part thereof) to the Federal Agency Official and the owner;

(o) A statement that the Repository Official shall not transfer, repatriate or discard a federally-owned collection (or any part thereof) without the written permission of the Federal Agency Official, and not transfer, repatriate or discard a federally administered collection (or any part thereof) without the written permission of the Federal Agency Official and the owner;

(p) A statement that the Repository Official shall not sell the collection; and

(q) A statement that the repository shall provide curatorial services in accordance with the regulations in this part.

§ 79.9 Standards to determine when a repository possesses the capability to provide adequate long-term curatorial services.

The Federal Agency Official shall determine that a repository has the capability to provide adequate long-term curatorial services when the repository is able to:

(a) Accession, label, catalog, store, maintain, inventory and conserve the particular collection on a long-term basis using professional museum and archival practices; and

(b) Comply with the following, as appropriate to the nature and consent of the collection;

(1) Maintain complete and accurate records of the collection, including:

(i) Records on acquisitions;

(ii) Catalog and artifact inventory lists;

(iii) Descriptive information, including field notes, site forms and reports;

(iv) Photographs, negatives and slides;

(v) Locational information, including maps;

(vi) Information on the condition of the collection, including any completed conservation treatments;

(vii) Approved loans and other uses;

(viii) Inventory and inspection records, including any environmental monitoring records;

(ix) Records on lost, deteriorated, damaged or destroyed Government properly; and

(x) Records on any deaccessions and subsequent transfers, repatriations or discards, as approved by the Federal Agency Official;

(2) Dedicate the requisite facilities, equipment and space in the physical plant to property store, study and conserve the collection. Space used for storage, study, conservation and, if exhibited, any exhibition must not be used for non-curatorial purposes that would endanger or damage the collection;

(3) Keep the collection under physically secure conditions within storage, laboratory, study and any exhibition areas by:

(i) Having the physical plant meet local electrical, fire, building, health and safety codes;

(ii) Having an appropriate and operational fire detection and suppression system;

(iii) Having an appropriate and operational intrusion detection and deterrent system;

(iv) Having an adequate emergency management plan that establishes procedures for responding to fires, floods, natural disasters, civil unrest, acts of violence, structural failures and failures of mechanical systems within the physical plant;

(v) Providing fragile or valuable items in a collection with additional security such as locking the items in a safe, vault or museum specimen cabinet, as appropriate;

(vi) Limiting and controlling access to keys, the collection and the physical plant; and

(vii) Inspecting the physical plant in accordance with § 79.11 of this part for possible security weaknesses and environmental control problems, and taking necessary actions to maintain the integrity of the collection;

(4) Require staff and any consultants who are responsible for managing and preserving the collection to be qualified museum professionals;

(5) Handle, store, clean, conserve and, if exhibited, exhibit the collection in a manner that:

(i) Is appropriate to the nature of the material remains and associated records;

(ii) Protects them from breakage and possible deterioration from adverse temperature and relative humidity, visible light, ultraviolet radiation, dust, soot, gases, mold, fungus, insects, rodents and general neglect; and

(iii) Preserves data that may be studied in future laboratory analyses. When material remains in a collection are to be treated with chemical solutions or preservatives that will permanently alter the remains, when possible, retain untreated representative samples of each affected artifact type, environmental specimen or other category of material remains to be treated. Untreated samples should not be stabilized or conserved beyond dry brushing;

(6) Store site forms, field notes, artifacts inventory lists, computer disks and tapes, catalog forms and a copy of the final report in a manner that will protect them from theft and fire such as:

(i) Storing the records in an appropriate insulated, fire resistant, locking cabinet, safe, vault or other container, or in a location with a fire suppression system;

(ii) Storing a duplicate set of records in a separate location; or

(iii) Ensuring that records are maintained and accessible through another party. For example, copies of final reports and site forms frequently are maintained by the State Historic Preservation Officer, the State Archeologist or the State museum or universtiy. The Tribal Historic Preservation Officer and Indian tribal museum ordinarily maintain records on collections recovered from sites located on Indian lands. The National Technical Information Service and the Defense Technical Information Service maintain copies of final reports that have been deposited by Federal agencies. The National Archeological Database maintains summary information on archeological reports and projects, including information on the location of those reports.

(7) Inspect the collection in accordance with § 79.11 of this part for possible deterioration and damage, and perform only those actions as are absolutely necessary to stabilize the collection and rid it of any agents of deterioration;

(8) Conduct inventories in accordance with § 79.11 of this part to verify the location of the material remains, associated records and any other Federal personal property that is furnished to the repository; and

(9) Provide access to the collection in accordance with § 79.10 of this part.

§ 79.10 Use of collections.

(a) The Federal Agency Official shall ensure that the Repository Official makes the collection available for scientific, educational and religious uses, subject to such terms and conditions as are necessary to protect and preserve the condition, research potential, religious or sacred importance, and uniqueness of the collection.

(b) *Scientific and educational uses.* A collection shall be made available to qualified professionals for study, loan and use for such purposes as in-house and traveling exhibits, teaching, public interpretation, scientific analysis and scholarly research. Qualified professionals would include, but not be limited to, curators, conservators, collection managers, exhibitors, researchers, scholars, archeological

contractors and educators. Students may use a collection when under the direction of a qualified professional. Any resulting exhibits and publications shall acknowledge the repository as the curatorial facility and the Federal agency as the owner or administrator, as appropriate. When the collection is from Indian lands and the Indian landowner and the Indian tribe having jurisdiction over the lands wish to be identified, those individuals and the Indian tribe shall also be acknowledged. Copies of any resulting publications shall be provided to the Repository Official and the Federal Agency Official. When Indian lands are involved, copies of such publications shall also be provided to the Tribal Offical and the Tribal Historic Preservation Officer, if any, of the Indian tribe that owns or has jurisdiction over such lands.

(c) *Religious uses.* Religious remains in a collection shall be made available to persons for use in religious rituals or spiritual activities. Religious remains generally are of interest to medicine men and women, and other religious practitioners and persons from Indian tribes, Alaskan Native corporations, Native Hawaiians, and other indigenous and immigrant ethnic, social and religious groups that have aboriginal or historic ties to the lands from which the remains are recovered, and have traditionally used the remains or class of remains in religious rituals or spiritual activities.

(d) *Terms and conditions.* (1) In accordance with section 9 of the Archaeological Resources Protection Act (16 U.S.C. 470*hh*) and section 304 of the National Historic Preservation Act (16 U.S.C. 470 *w*–3), the Federal Agency Official shall restrict access to associated records that contain information relating to the nature, location or character of a prehistoric or historic resource unless the Federal Agency Official determines that such disclosure would not create a risk of harm, theft or destruction to the resource or to the area or place where the resource is located.

(2) Section –.18(a)(2) of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229 sets forth procedures whereby information relating to the nature, location or character of a prehistoric or historic resource may be made available to the Governor of any State. The Federal Agency Official may make information available to other persons who, following the procedures in §–.18(a)(2) of the referenced uniform regulations, demonstrate that the disclosure will not create a risk of harm, theft or destruction to the resource or to the area or place where the resource is located. Other persons generally would include, but not be limited to, archeological contractors, researchers, scholars, tribal representatives, Federal, State and local agency personnel, and other persons who are studying the resource or class or resources.

(3) When a collection is from Indian lands, the Federal Agency Official shall place such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands on:

(i) Scientific, educational or religious uses of material remains; and

(ii) Access to associated records that contain information relating to the nature, location or character of the resource.

(4) When a collection is from a site on public lands that the Federal Agency Official has determined is of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such lands, the Federal Agency Official shall place such terms and conditions as may have been developed pursuant to § –.7 of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229 on:

(i) Scientific, educational or religious uses of material remains; and

(ii) Access to associated records that contain information relating to the nature, location or character of the resource.

(5) The Federal Agency Official shall not allow uses that would alter, damage or destory an object in a collection unless the Federal Agency Official determines that such use is necessary for scientifc studies or public interpretation, and the potential gain in scientific or interpretive information outweighs the potential loss of the object. When possible, such use should be limited to unprovenienced, nonunique, nonfragile objects, or to a sample of objects drawn from a larger collection of similar objects.

(e) No collection (or a part thereof) shall be loaned to any person without a written agreement between the Repository Official and the borrower that specifies the terms and conditions of the loan. Appendix C to the regulations in this part contains an example of a short-term loan agreement for a federally-owned collection. At a minimum, a loan agreement shall specify:

(1) The collection or object being loaned;

(2) The purpose of the loan;

(3) The length of the loan;

(4) Any restrictions on scientific, educational or religious uses, including whether any object may be altered, damaged or destroyed;

(5) Except as provided in paragraph (e)(4) of this section, that the borrower shall handle the collection or object being borrowed during the term of the loan in accordance with this part so as not to damage or reduce its scentific, educational, religious or cultural value; and

(6) Any requirements for insuring the collection or object being borrowed for any loss, damage or destruction during transit and while in the borrower's possession.

(f) The Federal Agency Official shall ensure that the Repository Official maintains administrative records that document approved scentific, educational and religious uses of the collection.

(g) The Repository Official may charge persons who study, borrow or use a collection (or a part thereof) reasonable fees to cover costs for handling, packing, shipping and insuring material remains, for photocopying associated records, and for other related incidental costs.

§ 79.11 Conduct of inspections and inventories.

(a) The inspections and inventories specified in this section shall be conducted periodically in accordance with the Federal Property and Administrative Services Act (40 U.S.C. 484), its implementing regulation (41 CFR part 101), any agency-specific regulations on the management of Federal property, and any agency-specific statutes and regulations on the management of museum collections.

(b) Consistent with paragraph (a) of this section, the Federal Agency Official shall ensure that the Repository Official:

(1) Provides the Federal Agency Official and, when the collection is from Indian lands, the Indian landowner and the Tribal Offical of the Indian tribe that has jurisdiction over the lands with a copy of the catalog list of the contents of the collection received and accessioned by the repository;

(2) Provides the Federal Agency Official will a list of any other U.S. Government-owned personal property received by the repository;

(3) Periodically inspects the physical plant for the purpose of monitoring the physical security and environmental control measures;

(4) Periodically inspects the collection for the purposes of assessing the condition of the material remains and associated records, and of monitoring

those remains and records for possible deterioration and damage;

(5) Periodically inventories the collection by accession, lot or catalog record for the purpose of verifying the location of the material remains and associated records;

(6) Periodically inventories any other U.S. Government-owned personal property in the possession of the repository;

(7) Has qualified museum professionals conduct the inspections and inventories;

(8) Following each inspection and inventory, prepares and provides the Federal Agency Official with a written report of the results of the inspection and inventory, including the status of the collection, treatments completed and recommendations for additional treatments. When the collection is from Indian lands, the Indian landowner and the Tribal Official of the Indian tribe that has jurisdiction over the lands shall also be provided with a copy of the report;

(9) Within five (5) days of the discovery of any loss or theft of, deterioriation and damage to, or destruction of the collection (or a part thereof) or any other U.S. Government-owned personal property, prepares and provides the Federal Agency Official with a written notification of the circumstances surrounding the loss, theft, deterioration, damage or destruction. When the collection is from Indian lands, the Indian landowner and the Tribal Official and the Indian tribe that has jurisdiction over the lands shall also be provided with a copy of the notification; and

(10) Makes the repository, the collection and any other U.S. Government-owned personal property available for periodic inspection by the:

(i) Federal Agency Official;

(ii) When the collection is from Indian lands, the Indian landowner and the Tribal Official of the Indian tribe that has jurisdiction over the lands; and

(iii) When the collection contains religious remains, the Indian tribal elders, religious leaders, and other officials representing the Indian tribe or other group for which the remains have religious or sacred importance.

(c) Consistent with paragraph (a) of this section, the Federal Agency Official shall have qualified Federal agency professionals:

(1) Investigate reports of a lost, stolen, deteriorated, damaged or destroyed collection (or a part thereof) or any other U.S. Government-owned personal property; and

(2) Periodically inspect the repository, the collection and any other U.S. Government-owned personal property for the purposes of:

(i) Determining whether the repository is in compliance with the minimum standards set forth in § 79.9 of this part; and

(ii) Evaluating the performance of the repository in providing curatorial services under any contract, memorandum, agreement or other appropriate written instrument.

(d) The frequency and methods for conducting and documenting inspections and inventories stipulated in this section shall be mutually agreed upon, in writing, by the Federal Agency Official and the Repository Official, and be appropriate to the nature and content of the collection:

(1) Collections from Indian lands shall be inspected and inventoried in accordance with such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands.

(2) Religious remains in collections from public lands shall be inspected and inventoried in accordance with such terms and conditions as may have been developed pursuant to § –.7 of uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229.

(3) Material remains and records of a fragile or perishable nature should be inspected for deterioration and damage on a more frequent basis than lithic or more stable remains or records.

(4) Because frequent handling will accelerate the breakdown of fragile materials, material remains and records should be viewed but handled as little as possible during inspections and inventories.

(5) Material remains and records of a valuable nature should be inventoried on a more frequent basis than other less valuable remains or records.

(6) Persons such as those listed in § 79.6(c) of this part who have expertise in the management and preservation of similar collections should be able to provide advice to the Federal Agency Official concerning the appropriate frequency and methods for conducting inspections and inventories of a particular collection.

(e) Consistent with the Single Audit Act (31 U.S.C. 75), when two or more Federal agencies deposit collections in the same repository, the Federal Agency Officials should enter into an interagency agreement for the purposes of:

(1) Requesting the Repository Official to coordinate the inspections and inventories, stipulated in paragraph (b) of this section, for each of the collections;

(2) Designating one or more qualified Federal agency professionals to:

(i) Conduct inspections, stipulated in paragraph (c)(2) of this section, on behalf of the other agencies; and

(ii) Following each inspection, prepare and distribute to each Federal Agency Official a written report of findings, including an evaluation of performance and recommendations to correct any deficiencies and resolve any problems that were identified. When the collection is from Indian lands, the Indian landowner and the Tribal Official of the Indian tribe that has jurisdiction over the lands shall also be provided with a copy of the report; and

(3) Ensuring consistency in the conduct of inspections and inventories conducted pursuant to this section.

Appendix A to Part 79—Example of a Deed of Gift

DEED OF GIFT
TO THE
(Name of the Federal agency)

Whereas, the (name of the Federal agency), hereinafter called the Recipient, is dedicated to the preservation and protection of artifacts, specimens and associated records that are generated in connection with its projects and programs;

Whereas, certain artifacts and specimens, listed in Attachment A to this Deed of Gift, were recoverd from the (name of the prehistoric or historic resource) site in connection with the Recipient's (name of the Recipient's project) project;

Whereas, the (name of the prehistoric or historic resource) site is located on lands to which title is held by (name of the donor), hereinafter called the Donor, and that the Donor holds free and clear title to the artifacts and specimens; and

Whereas, the Donor is desirous of donating the artifacts and speciments to the Recipient to ensure their continued preservation and protection;

Now therefore, the Donor does hereby unconditionally donate to the Recipient, for unrestricted use, the artifacts and specimens listed in Attachment A to this Deed of Gift; and

The Recipient hereby gratefully acknowleges the receipt of the artifacts and speciments.

Signed: (signature of the Donor)

Date: (date)

Signed: (signature of the Federal Agency Official)

Date: (date)

Attachment A: Inventory of Artifacts and Specimens.

Appendix B to Part 79—Example of a Memorandum of Understanding for Curatorial Services for a Federally-Owned Collection

MEMORANDUM OF UNDERSTANDING FOR CURATORIAL SERVICES BETWEEN THE
(Name of the Federal agency)
AND THE
(Name of the Repository)

This Memorandum of Understanding is entered into this (day) day of (month and year), between the United States of America, acting by and through the (name of the Federal agency), hereinafter called the Depositor, and the (name of the Repository), hereinafter called the Repository, in the State of (name of the State).

The Parties do witnesseth that,

Whereas, the Depositor has the responsibility under Federal law to preserve for future use certain collections of archeological artifacts, specimens and associated records, herein called the Collection, listed in Attachment A which is attached hereto and made a part hereof, and is desirous of obtaining curatorial services; and

Whereas, the Repository is desirous of obtaining, housing and maintaining the Collection, and recognizes the benefits which will accrue to it, the public and scientific interests by housing and maintaining the Collection for study and other educational purposes; and

Whereas, the Parties hereto recognize the Federal Government's continued ownership and control over the Collection and any other U.S. Government-owned personal property, listed in Attachment B which is attached hereto and made a part hereof, provided to the Repository, and the Federal Government's responsibility to ensure that the Collection is suitably managed and preserved for the public good; and

Whereas, the Parties hereto recognize the mutual benefits to be derived by having the Collection suitably housed and maintained by the Repository;

Now therefore, the Parties do mutually agree as follows:

1. The Repository shall:

a. Provide for the professional care and management of the Collection from the (names of the prehistoric and historic resources) sites, assigned (list site numbers) site numbers. The collections were recovered in connection with the (name of the Federal or federally-authorized project) project, located in (name of the nearest city or town), (name of the county) county, in the State of (name of the State).

b. Perform all work necessary to protect the Collection in accordance with the regulation 36 CFR part 79 for the curation of federally-owned and administered archeological collections and the terms and conditions stipulated in Attachment C to this Memorandum.

c. Assign as the Curator, the Collections Manager and the Conservator having responsibility for the work under this Memorandum, persons who are qualified museum professionals and whose expertise is appropriate to the nature and content of the Collection.

d. Begin all work on or about (month, date and year) and continue for a period of (number of years) years or until sooner terminated or revoked in accordance with the terms set forth herein.

e. Provide and maintain a repository facility having requisite equipment, space and adequate safeguards for the physical security and controlled environment for the Collection and any other U.S. Government-owned personal property in the possession of the Repository.

f. Not in any way adversely alter or deface any of the Collection except as may be absolutely necessary in the course of stabilization, conservation, scientific study, analysis and research. Any activity that will involve the intentional destruction of any of the Collection must be approved in advance and in writing by the Depositor.

g. Annually inspect the facilities, the Collection and any other U.S. Government-owned personal property. Every (number of years) years inventory the Collection and any other U.S. Government-owned personal property. Perform only those conservation treatments as are absolutely necessary to ensure the physical stability and integrity of the Collection, and report the results of inventories, inspections and treatments to the Depositor.

h. Within five (5) days of discovery, report all instances of and circumstances surrounding loss of, deterioration and damage to, or destruction of the Collection and any other U.S. Government-owned personal property to the Depositor, and those actions taken to stabilize the Collection and to correct any deficiencies in the physical plant or operating procedures that may have contributed to the loss, deterioration, damage or destruction. Any actions that will involve the repair and restoration of any of the Collection and any other U.S. Government-owned personal property must be approved in advance and in writing by the Depositor.

i. Review and approve or deny requests for access to or short-term loan of the Collection (or a part thereof) for scientific, educational or religious uses in accordance with the regulation 36 CFR part 79 for the curation of federally-owned and administered archeological collections and the terms and conditions stipulated in Attachment C of this Memorandum. In addition, refer requests for consumptive uses of the Collection (or a part thereof) to the Depositor for approval or denial.

j. Not mortgage, pledge, assign, repatriate, transfer, exchange, give, sublet, discard or part with possession of any of the Collection or any other U.S. Government-owned personal property in any manner to any third party either directly or in-directly without the prior written permission of the Depositor, and redirect any such request to the Depositor for response. In addition, not take any action whereby any of the Collection or any other U.S. Government-owned personal property shall or may be encumbered, seized, taken in execution, sold, attached, lost, stolen, destroyed or damaged.

2. The Depositor shall:

a. On or about (month, date and year), deliver or cause to be delivered to the Repository the Collection, as described in Attachment A, and any other U.S. Government-owned personal property, as described in Attachment B.

b. Assign as the Depositor's Representative having full authority with regard to this Memorandum, a person who meets pertinent professional qualifications.

c. Every (number of years) years, jointly with the Repository's designated representative, have the Depositor's Representative inspect and inventory the Collection and any other U.S. Government-owned personal property, and inspect the repository facility.

d. Review and approve or deny requests for consumptively using the Collection (or a part thereof).

3. Removal of all or any portion of the Collection from the premises of the Repository for scientific, educational or religious purposes may be allowed only in accordance with the regulation 36 CFR part 79 for the curation of federally-owned and administered archeological collections; the terms and conditions stipulated in Attachment C to this Memorandum; any conditions for handling, packaging and transporting the Collection; and other conditions that may be specified by the Repository to prevent breakage, deterioration and contamination.

4. The Collection or portions thereof may be exhibited, photographed or otherwise reproduced and studied in accordance with the terms and conditions stipulated in Attachment C to this Memorandum. All exhibits, reproductions and studies shall credit the Depositor, and read as follows: "Courtesy of the (name of the Federal agency)." The Repository agrees to provide the Depositor with copies of any resulting publications.

5. The Repository shall maintain complete and accurate records of the Collection and any other U.S. Government-owned personal property, including information on the study, use, loan and location of said Collection which has been removed from the premises of the Repository.

6. Upon execution by both parties, this Memorandum of Understanding shall be effective on this (day) day of (month and year), and shall remain in effect for (number of years) years, at which time it will be reviewed, revised, as necessary, and reaffirmed or terminated. This Memorandum may be revised or extended by mutual consent of both parties, or by issuance of a written amendment signed and dated by both parties. Either party may terminate this Memorandum by providing 90 days written notice. Upon termination, the Repository shall return such Collection and any other U.S. Government-owned personal property to the destination directed by the Depositor and in such manner to preclude breakage, loss, deterioration and contamination during handling, packaging and shipping, and in accordance with other conditions specified in writing by the Depositor. If the Repository terminates, or is in default of, this Memorandum, the Repository shall fund the packaging and transportation costs. If the Depositor terminates this Memorandum, the

Depositor shall fund the packaging and transportation costs.

7. Title to the Collection being cared for and maintained under this Memorandum lies with the Federal Government.

In witness whereof, the Parties hereto have executed this Memorandum.

Signed: (signature of the Federal Agency Official)

Date: (date)

Signed: (signature of the Repository Official)

Date: (date)

Attachment A: Inventory of the Collection

Attachment B: Inventory of any other U.S. Government-owned Personal Property

Attachment C: Terms and Conditions Required by the Depositor

Appendix C to Part 79—Example of a Short-Term Loan Agreement for a Federally-Owned Collection

SHORT-TERM LOAN AGREEMENT
BETWEEN THE
(Name of the Repository)
AND THE
(Name of the Borrower)

The (name of the Repository), hereinafter called the Repository, agrees to loan to (name of the Borrower), hereinafter called the Borrower, certain artifacts, specimens and associated records, listed in Attachment A, which were collected from the (name of the prehistoric or historic resource) site which is assigned (list site number) site number. The collection was recovered in connection with the (name of the Federal or federally authorized project) project, located in (name of the nearest city or town), (name of the county) county in the State of (name of the State). The Collection is the property of the U.S. Government.

The artifacts, specimens and associated records are being loaned for the purpose of (cite the purpose of the loan), beginning on (month, day and year) and ending on (month, day and year).

During the term of the loan, the Borrower agrees to handle, package and ship or transport the Collection in a manner that protects it from breakage, loss, deterioration and contamination, in conformance with the regulation 36 CFR part 79 for the curation of federally-owned and administered archeological collections and the terms and conditions stipulated in Attachment B to this loan agreement.

The Borrower agrees to assume full responsibility for insuring the Collection or for providing funds for the repair or replacement of objects that are damaged or lost during transit and while in the Borrower's possession. Within five (5) days of discovery, the Borrower will notify the Repository of instances and circumstances surrounding any loss of, deterioration and damage to, or destruction of the Collection and will, at the direction of the Repository, take steps to conserve damaged materials.

The Borrower agrees to acknowledge and credit the U.S. Government and the Repository in any exhibits or publications resulting from the loan. The credit line shall read as follows: "Courtesy of the (names of the Federal agency and the Repository)." The Borrower agrees to provide the Repository and the (name of the Federal agency) with copies of any resulting publications.

Upon termination of this agreement, the Borrower agrees to properly package and ship or transport the Collection to the Repository.

Either party may terminate this agreement, effective not less than (number of days) days after receipt by the other party of written notice, without further liability to either party.

Signed: (signature of the Repository Official)

Date: (date)

Signed: (signature of the Borrower)

Date: (date)

Attachment A: Inventory of the Objects being Loaned.

Attachment B: Terms and Conditions of the Loan.

[FR Doc. 90–21348 Filed 9–11–90; 8:45 am]

BILLING CODE 4310–70–M

federal register

Wednesday
September 12, 1990

Part IV

The President

Proclamation 6175—Agreement on Trade Relations Between the United States of America and the Czech and Slovak Federal Republic

Federal Register
Vol. 55, No. 177
Wednesday, September 12, 1990

Presidential Documents

Title 3—

The President

Proclamation 6175 of September 6, 1990

Agreement on Trade Relations Between the United States of America and the Czech and Slovak Federal Republic

By the President of the United States of America

A Proclamation

1. Pursuant to the authority vested in me by the Constitution and the laws of the United States, as President of the United States of America, I, acting through duly empowered representatives, entered into negotiations with representatives of the Czech and Slovak Federal Republic to conclude an agreement on trade relations between the United States of America and the Czech and Slovak Federal Republic.

2. These negotiations were conducted in accordance with the requirements of the Trade Act of 1974 (P.L. 93–618, January 3, 1975; 88 Stat. 1978), as amended (the "Trade Act").

3. As a result of these negotiations, an "Agreement on Trade Relations Between the Government of the United States of America and the Government of the Czechoslovak Federative Republic," including exchanges of letters which form an integral part of the Agreement, the foregoing in English and Czech, was signed on April 12, 1990, by duly empowered representatives of the two Governments and is set forth as an annex to this proclamation.

4. This Agreement conforms to the requirements relating to bilateral commercial agreements set forth in section 405(b) of the Trade Act (19 U.S.C. 2435(b)).

5. Article XVIII of the Agreement provides that the Agreement shall enter into force on the date of exchange of written notices of acceptance by the two Governments.

6. Section 405(c) of the Trade Act (19 U.S.C. 2435(c)) provides that a bilateral commercial agreement providing nondiscriminatory treatment to the products of a country heretofore denied such treatment, and a proclamation implementing such agreement, shall take effect only if approved by the Congress under the provisions of that Act.

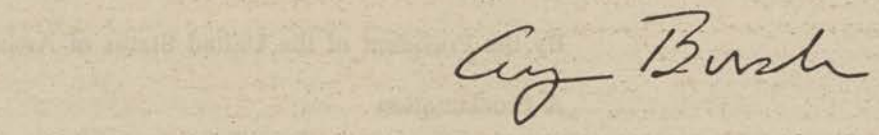
7. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States the substance of the provisions of that Act, of other acts affecting import treatment, and actions taken thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 404, 405 and 604 of the Trade Act of 1974, as amended, do proclaim that:

(1) This proclamation shall become effective, said Agreement shall enter into force, and nondiscriminatory treatment shall be extended to the products of the Czech and Slovak Federal Republic, in accordance with the terms of said Agreement, on the date of exchange of written notices of acceptance in accordance with Article XVIII of said Agreement. The United States Trade Representative shall publish notice of the effective date in the **Federal Register**.

(2) Effective with respect to articles entered, or withdrawn from warehouse for consumption, into the customs territory of the United States on or after the date provided in paragraph (1) of this proclamation, general note 3(b) of the Harmonized Tariff Schedule of the United States, enumerating those countries whose products are subject to duty at the rates set forth in rate of duty column 2 of the tariff schedule, is modified by striking out "Czechoslovakia".

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of September, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.



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Presidential Documents

AGREEMENT ON TRADE RELATIONS BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE CZECHOSLOVAK FEDERATIVE REPUBLIC

The Government of the United States of America and the Government of the Czechoslovak Federative Republic (hereinafter referred to collectively as "Parties" and individually as "Party"),

Desiring to develop further the enduring friendship between their nations,

Noting the steady improvement in relations between the two countries,

Desiring to adopt mutually advantageous and equitable rules governing their trade and to ensure a predictable commercial environment,

Affirming that the evolution of market-based economic institutions and the strengthening of the private sector will aid the development of mutually beneficial trade relations,

Acknowledging that the development of trade relations and direct contact between enterprises of the Parties, including private enterprises, will promote openness and mutual understanding,

Recognizing that development of bilateral trade may contribute to better mutual understanding and cooperation, and can contribute to the well-being of workers and promote respect for internationally recognized worker rights,

Resolving to incorporate in their trade relations the principles and rules of the General Agreement on Tariffs and Trade (hereinafter referred to as "GATT"), to which both the United States of America and Czechoslovakia are founding contracting parties,

Being convinced that an agreement on trade relations between the two Parties can create a framework which will foster the development and expansion of commercial ties between their respective nationals and companies, and best serve the mutual interests of the Parties,

Have agreed as follows:

ARTICLE I.—APPLICATION OF THE GATT, MOST-FAVORED-NATION TREATMENT, AND THE STATUS OF CERTAIN GATT CODES

1. Both Parties reaffirm the importance of their participation in the GATT and the importance of the provisions and principles of the GATT for their respective economic policies.

2. To this end, the Parties shall apply between themselves the provisions of the GATT, as those provisions apply to each Party, and shall accord each other's products most-favored-nation treatment as provided in the GATT, provided that, to the extent any provision of the GATT is inconsistent with any provision of this Agreement, the latter shall apply.

3. Both Parties reaffirm the importance of their participation in the Agreement on Technical Barriers to Trade, the Agreement on Import Licensing Procedures, the Agreement on Implementation of Article VII of the GATT and the Protocol to that Agreement (Customs Valuation), and the Agreement on Implementation of Article VI of the GATT (Anti-Dumping) and the importance of the provisions and principles therein for their respective economic policies.

Both Parties commit to participating in multilateral negotiations pertaining to those agreements with a view towards improving them.

4. Each Party shall accord to imports of products and services originating in the territory of the other Party most-favored-nation treatment with respect to the allocation of and access to the currency needed to pay for such imports.

ARTICLE II.—MAINTAINING A SATISFACTORY BALANCE OF MARKET OPPORTUNITIES

1. The Parties agree to maintain a satisfactory balance of market access opportunities in trade in products and services, taking into account, inter alia, the extent of tariffs or other duties or charges on trade in products and services; the extent of non-tariff barriers; the effects of state-to-state trade agreements; and the extent of responsibilities and rights deriving from those GATT Codes or similar agreements to which both Parties are signatories, and in particular to reciprocate satisfactorily reductions by the other Party in tariffs and nontariff barriers to trade that result from multilateral negotiations.

2. Each Party shall administer all tariff and nontariff measures affecting trade in products and services in a manner which affords, with respect to both third country and domestic competitors, meaningful competitive opportunities for products and services of the other Party.

ARTICLE III.—GENERAL OBLIGATIONS WITH RESPECT TO TRADE

1. Trade shall be effected by contracts between nationals and companies of the United States and economic entities of Czechoslovakia concluded on the basis of non-discrimination and in the exercise of their independent commercial judgement and on the basis of customary commercial considerations such as price, quality, availability, delivery and terms of payment.

2. Neither Party shall require or encourage nationals and companies of the United States or Czechoslovakia to engage in barter or countertrade.

ARTICLE IV.—EXPANSION AND PROMOTION OF TRADE

1. The Parties affirm their desire to expand trade in products and services consistent with the terms of this Agreement. They shall take appropriate measures to encourage and facilitate the exchange of products and services and to secure favorable conditions for the long term development of trade relations between their respective nationals and companies. The Parties shall promote the development and diversification of their commercial exchanges to the fullest extent possible.

2. The Parties shall take appropriate measures to encourage the expansion of commercial contacts with a view to increasing trade. In this regard, the Government of Czechoslovakia expects that, during the term of this Agreement, economic entities of Czechoslovakia shall, consistent with commercial considerations, increase their purchases of products and services from the United States, while the Government of the United States expects that the effect of this Agreement will be to encourage increased purchases by nationals and companies of the United States of products and services from Czechoslovakia. Toward this end, the Parties shall publicize this Agreement and ensure that it is made available to all interested parties.

3. Each Party shall encourage and facilitate the holding of trade promotional events such as fairs, exhibitions, missions and seminars in its territory and in the territory of the other Party. Similarly, each Party shall encourage and facilitate the participation of its respective nationals and companies in such events. Subject to the laws in force within their respective territories, the Parties agree to allow the import and re-export on a duty-free basis of all

articles for use in such events, provided that such articles are not sold or otherwise transferred.

ARTICLE V.—BUSINESS FACILITATION

1. Each Party shall afford commercial representations of the other Party fair and equitable treatment with respect to the conduct of their operations.

2. Subject to its laws and procedures governing immigration and foreign missions, each Party shall permit the establishment within its territory of commercial representations of nationals and companies of the other Party and shall accord non-discriminatory treatment to the activities of such representations.

3. Subject to its laws and procedures governing immigration and foreign missions, each Party shall permit such commercial representations established in its territory to hire directly employees who are nationals of either Party or of third countries and to compensate such employees on terms that are mutually agreed between the parties, consistent with such Party's minimum wage laws.

4. Each Party shall permit commercial representations of the other Party to import and use, in accordance with normal commercial practices, office and other equipment in connection with the conduct of their activities in the territory of such Party.

5. Subject to its laws governing foreign missions, each Party shall permit such commercial representations access to office space and living accommodations on a non-discriminatory basis, including at non-discriminatory prices where such prices are set or controlled by the government.

6. Subject to its laws and procedures governing immigration and foreign missions, each Party shall permit nationals and companies of the other Party to engage or serve as agents, consultants and distributors of either Party and of third countries on prices and terms mutually agreed between the parties, provided that such agents, consultants, or distributors are entitled to engage in international trade.

7. Each Party shall, in accordance with its commitments made in the International Convention to Facilitate the Importation of Commercial Samples and Advertising Material, done at Geneva on November 7, 1952, permit commercial representations to stock an adequate supply of samples. In addition, each Party shall permit commercial representations to distribute replacement parts for after-sales services on a non-commercial basis.

8. Each Party shall permit nationals and companies of the other Party to advertise their products and services (a) through direct agreement with the advertising media, including television, radio, print and billboard, and (b) by direct mail, including the use of enclosed envelopes and cards preaddressed to that national or company.

9. Each Party shall encourage direct contact between nationals and companies of the other Party and end-users and other customers of their goods and services, and with agencies and organizations whose decisions will affect potential sales. The Parties will permit and encourage direct sales between U.S. nationals and companies and Czechoslovak economic entities.

10. Each Party shall permit nationals and companies of the other Party to conduct market studies, either directly or by contract, within its territory. To facilitate the conduct of market research, each Party shall upon request make available non-confidential, non-proprietary information within its possession to nationals and companies of the other Party engaged in such efforts.

11. Each Party shall provide access to governmentally-provided services on a national treatment basis, including public utilities, to nationals and companies

of the other Party in connection with the operations of their commercial representations.

12. Neither Party shall impose measures which unreasonably impair contractual or property rights or other interests acquired within its territory by nationals and companies of the other Party.

ARTICLE VI.—TRADE IN SERVICES

1. The Parties recognize the growing economic significance of service industries and agree to consult on matters affecting the conduct of service business between the two countries and on particular matters of mutual interest relating to individual service sectors with the objective of attaining maximum possible market access.

2. Services subject to existing bilateral agreements, such as civil aviation, and services subject to ongoing negotiations, such as maritime transportation, will be, or will remain, subject to their respective agreements.

3. Provisions elsewhere in this Agreement relating to trade promotion, business facilitation, commercial representation, transfers and convertibility, shall apply to services as appropriate.

ARTICLE VII.—TRANSPARENCY

1. Each Party shall make available publicly, on a timely basis, all laws and regulations, judicial decisions, and administrative rulings of general application related to commercial activity, including trade, investment, taxation, banking, insurance and other financial services, transport and labor. Each Party shall also endeavor to provide such information in reading rooms in its own capital and in the capital of the other Party.

2. Each Party shall provide nationals and companies of the other Party with access to available non-confidential, non-proprietary data on the national economy and individual sectors, including information on foreign trade.

3. Without prejudice to either Party's obligations and rights set forth in the Agreement on Technical Barriers to Trade, each Party shall allow nationals and companies of the other Party the opportunity, to the extent practicable, to comment on the formulation of rules and regulations which affect the conduct of business activities, including, inter alia, the setting of standards and technical regulations.

ARTICLE VIII.—GOVERNMENT COMMERCIAL OFFICES

1. Subject to its laws governing foreign missions, each Party shall allow government commercial offices to hire directly host-country nationals and, subject to immigration laws and procedures, third-country nationals.

2. Each Party shall ensure unhindered access of host-country nationals to government commercial offices of the other Party.

3. Each Party shall encourage the participation of its nationals and companies in the activities of their respective government commercial offices, especially with respect to events held on the premises of such commercial offices.

4. Each Party shall encourage and facilitate access by government commercial office personnel of the other Party to host-country officials at both the federal and subfederal level, and representatives of nationals and companies of the host Party.

5. This Agreement shall not derogate from obligations assumed by either Party concerning the establishment of existing government commercial offices.

ARTICLE IX.—FINANCIAL PROVISIONS RELATING TO TRADE IN PRODUCTS AND SERVICES

1. All commercial transactions between nationals or companies of the Parties shall be made in United States dollars or any other currency that may be designated from time to time by the International Monetary Fund as being a freely usable currency unless otherwise agreed between the parties to individual transactions.

2. Neither Party shall restrict the export from its territory of convertible currencies or deposits, or instruments representative thereof, obtained in an authorized manner in connection with trade in products and services by nationals or companies of the other Party.

3. Expenditures in the territory of a Party by nationals and companies of the other Party may be made in local currency received in an authorized manner.

4. In connection with trade in products and services, each Party shall grant to nationals and companies of the other Party non-discriminatory treatment with respect to:

(a) opening and maintaining accounts in both local and foreign currency, and having access to funds deposited, in financial institutions located in the territory of the Party;

(b) payments, remittances and transfers of convertible currencies, or financial instruments representative thereof, between the territories of the two Parties, as well as between the territory of that Party and that of any third country; and

(c) rates of exchange and related matters.

ARTICLE X.—PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

1. Both Parties agree to provide adequate and effective protection and enforcement for patents, trademarks, copyrights, trade secrets and layout designs for integrated circuits. Each Party reaffirms its commitments to those international agreements relating to intellectual property to which both Parties are signatories.

2. Each Party reaffirms the commitments made with respect to industrial property in the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Stockholm on July 14, 1967.

3. Each Party reaffirms the commitments made in the Universal Copyright Convention of September 6, 1952, as revised at Paris on July 24, 1971 as well as their commitments made in the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Paris on July 14, 1971.

4. To provide adequate and effective protection and enforcement of intellectual property rights, each Party shall, *inter alia*

(a) Provide copyright protection for computer programs and databases as literary works under its copyright laws.

(b) Extend the term of protection for audiovisual works to at least fifty years from the date the work is made public.

(c) Provide protection for sound recordings for a term of at least fifty years from publication, and shall provide rights to prevent unauthorized distribution, reproduction and importation. In addition, the terms of such protection shall permit the owner of rights in the sound recording to prevent the unauthorized rental of a copy of the sound recording, notwithstanding the purchase of the sound recording.

(d) Provide protection for integrated circuit layout designs.

(e) Provide product and process protection for all areas of technology (except the Parties may exclude materials useful solely in atomic weapons).

(f) Provide comprehensive protection for trade secrets.

5. The Parties agree to submit to their respective legislative bodies no later than December 31, 1991 the legislation necessary to carry out the obligations of this Agreement and to exert their best efforts to enact and implement this legislation by that date.

ARTICLE XI.—IMPORT RELIEF

1. The Parties agree to consult promptly at the request of either Party whenever either actual or prospective imports of products originating in the territory of the other Party cause or threaten to cause or significantly contribute to market disruption. Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

2. Determination of market disruption or threat thereof by the importing Party shall be based upon a good faith application of its laws and on an affirmative finding of relevant facts and on their examination. The importing Party, in determining whether market disruption exists, may consider, among other factors: the volume of imports of the merchandise which is the subject of the inquiry; the effect of imports of the merchandise on prices in the territory of the importing Party for like or directly competitive articles; the impact of imports of such merchandise on domestic producers of like or directly competitive articles; and evidence of disruptive pricing practices or other efforts to unfairly manage trade patterns.

3. The consultations provided for in paragraph 1 of this Article shall have the objectives of (a) presenting and examining the factors relating to such imports that may be causing or threatening to cause or significantly contributing to market disruption, and (b) finding means of preventing or remedying such market disruption. Such consultations shall be concluded within sixty days from the date of the request for such consultation, unless the Parties otherwise agree.

4. Unless a different solution is mutually agreed upon during the consultations, the importing Party may (a) impose quantitative import limitations, tariff measures or any other restrictions or measures to such extent and for such a time as it deems necessary to prevent or remedy threatened or actual market disruption, and (b) take appropriate measures to ensure that imports from the territory of the other Party comply with such quantitative limitations or other restrictions. In this event, the other Party shall be free to deviate from its obligations under this Agreement with respect to substantially equivalent trade.

5. Where in the judgment of the importing Party, emergency action, which may include the existence of critical circumstances, is necessary to prevent or remedy such market disruption, the importing Party may take such action at any time and without prior consultations provided that such consultations shall be requested immediately thereafter.

6. Each Party shall ensure that its domestic procedures for determining market disruption are transparent and afford affected parties an opportunity to submit their views.

7. The Parties acknowledge that the elaboration of the market disruption safeguard provisions in this Article is without prejudice to the right of either Party to apply laws applicable to unfair trade, including antidumping and countervailing duty laws.

ARTICLE XII.—NATIONAL SECURITY

The provisions of this Agreement shall not limit the right of either Party to take any action for the protection of its security interests.

ARTICLE XIII.—EXCEPTIONS

1. Nothing in this Agreement shall be construed to prohibit any action by either Party which is required or specifically permitted by the GATT.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prohibit:

(a) measures for the protection of intellectual property rights and for the prevention of deceptive practices as set out in Article X of this Agreement (and the related side letter); provided that such measures shall be related to the extent of any injury suffered or the prevention of such injury; and

(b) any other measure for reasons contemplated by Article XX of the GATT, provided that the term "Agreement" in paragraph (d) of Article XX of the GATT shall be construed to refer to this Agreement.

3. Trade in products or services between the Parties subject to existing bilateral or multilateral agreements (or ongoing negotiations) in specific sectors, such as steel, textiles or civil aviation, shall be, or shall remain, subject to the terms of any such agreement.

4. Each Party reserves the right to deny to any company the advantages of this Agreement if nationals of any third country control such company and, in the case of a company of the other Party, that company has no substantial business activities in the territory of the other Party or is controlled by nationals of a third country with which the denying Party does not maintain normal economic relations.

ARTICLE XIV.—DISPUTE SETTLEMENT

1. Nationals and companies of either Party shall be accorded national treatment with respect to access to all courts and administrative bodies in the territory of the other Party, as plaintiffs, defendants or otherwise. They shall not claim or enjoy immunity from suit or execution of judgment, proceedings for the recognition and enforcement of arbitral awards or other liability in the territory of the other Party with respect to commercial transactions; they also shall not claim or enjoy immunities from taxation with respect to commercial transactions, except as may be provided in other bilateral agreements.

2. The Parties encourage the adoption of arbitration for the settlement of disputes arising out of commercial transactions concluded between nationals or companies of the United States of America and of Czechoslovakia. Such arbitration may be provided for by agreements in contracts between such nationals or companies, or in separate written agreements between them.

3. The parties may provide for arbitration under any internationally recognized arbitration rules, including the UNCITRAL Rules, in which case the parties should designate an Appointing Authority under said Rules in a country other than the United States of America or Czechoslovakia.

4. Unless otherwise agreed between the parties, the parties should specify as the place of arbitration a country other than the United States of America or Czechoslovakia, that is a party to the 1958 U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

5. Nothing in this Article shall be construed to prevent, and the Parties shall not prohibit, the parties from agreeing upon any other form of arbitration or dispute settlement which they mutually prefer and agree best suits their particular needs.

6. Each Party shall ensure that an effective means exists within its territory for the recognition and enforcement of arbitral awards.

ARTICLE XV.—CONSULTATIONS

1. The Parties shall, in accordance with their respective policies and objectives, cooperate bilaterally and at the international level in the solution of commercial problems of common interest.

2. The Parties agree to set up a Joint Commercial Commission which will, subject to the terms of reference of its establishment, foster economic cooperation and the expansion of trade under this Agreement, and review periodically the operation of this Agreement and make recommendations for achieving its objectives.

3. The Parties agree to consult promptly through appropriate channels at the request of either Party to discuss any matter concerning the interpretation or implementation of this Agreement or other relevant aspects of the relations between the Parties.

ARTICLE XVI.—AREAS FOR FURTHER ECONOMIC COOPERATION

1. For the purpose of further developing bilateral trade and providing for a steady increase in exchange of products and services, both Parties shall strive to achieve mutually acceptable agreements on taxation and investment issues, including the repatriation of profits and transfer of capital.

2. The Parties shall take appropriate steps to foster economic cooperation on as broad a base as possible in all fields deemed to be in their mutual interest, including with respect to statistics and standards. Among the objectives of such cooperation shall be:

—the development and prosperity of the Czechoslovak and American economies and standards of living,

—the encouragement of scientific and technological programs,

—the creation of new employment opportunities,

—the protection and improvement of the environment.

ARTICLE XVII.—DEFINITIONS

1. For purposes of this Agreement,

(a) "company" of a Party means any kind of corporation, association, state enterprise, cooperative or other organization, legally constituted under the laws and regulations of a Party or a political subdivision thereof whether or not organized for pecuniary gain, or privately or governmentally owned;

(b) "economic entity" means natural and juridical persons, including nationals and companies, entitled, according to Czechoslovak law, to carry out foreign trade activities;

(c) "commercial representation" means an organizational component part of a Party's company established in accordance with the laws of the respective Party;

(d) "non-discriminatory treatment" or "non-discrimination" means the better of national treatment or most-favored-nation treatment;

(e) "national treatment," when applied to a company or national, means that treatment which is at least as favorable as the most favorable treatment accorded by a Party to companies or nationals of that Party in like circumstances.

ARTICLE XVIII.—ENTRY INTO FORCE, TERM, SUSPENSION AND TERMINATION

1. This Agreement (including Side Letters which are an integral part of the Agreement) shall enter into force on the date of exchange of written notices of acceptance by the two Governments and shall remain in force as provided in paragraphs 2 and 3 of this Article.

2. (a) The initial term of this Agreement shall be three years, subject to subparagraphs (b) and (c) of this paragraph.

(b) If either Party encounters or foresees a problem concerning its domestic legal authority to carry out any of its obligations under this Agreement, such Party shall request immediate consultations with the other Party. Once consultations have been requested, the other Party shall enter into such consultations as soon as possible concerning the circumstances that have arisen with a view to finding a solution to avoid action under subparagraph (c).

(c) If either Party does not have domestic legal authority to carry out its obligations under this Agreement, either Party may suspend the application of this Agreement or, with the agreement of the other Party, any part of this Agreement. In that event, the Parties will, to the fullest extent practicable and consistent with domestic law, seek to minimize disruption to existing trade relations between the two countries.

3. This Agreement shall be extended for successive terms of three years each unless either Party has given written notice to the other Party of its intent to terminate this Agreement at least 30 days prior to the expiration of the then current term.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Washington, D.C. on April Twelfth, 1990, in duplicate, in the English and Czech languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA
Carla A. Hills
FOR THE GOVERNMENT OF THE
CZECHOSLOVAK FEDERATIVE REPUBLIC
Andrej Barcak

THE UNITED STATES TRADE REPRESENTATIVE

Executive Office of the President

Washington, D.C. 20506

Dear Mr. Minister:

I have the honor to confirm the following understanding reached between the delegations of the Czechoslovak Federative Republic and the United States of America in the course of negotiating the Agreement on Trade Relations signed on this day.

State-to-State Trade Agreements

With reference to paragraph 1 of Article II, the Government of Czechoslovakia confirms its policy to reduce the role in its foreign trade of state-to-state trade agreements which provide for imports of specified quantities of goods.

Commercial Representations

The Government of Czechoslovakia will make every effort to ensure prompt passage of its proposed legislation changing the authorization process for commercial representations to a simple registration process. If these legislative proposals do not become law by December 31, 1990, the Government of Czechoslovakia agrees to consult with the Government of the United States in order to agree on appropriate measures to realize the intent of this understanding.

Registration to Engage in Foreign Trade

Both Parties affirm their intention to promote the broadest possible opportunities for direct trade between their nationals and companies.

In order to meet this objective, the Government of Czechoslovakia confirms its policy to liberalize completely but gradually the Czechoslovak foreign trade system including the complete but gradual replacement of the authorization requirement for economic entities engaging in foreign commerce with a simple registration procedure.

The first measures in this respect will be taken on as broad a basis as possible in the amendment to the existing law which will be submitted by the Government of Czechoslovakia to the Federal Assembly in a short time and the Government will exert its best efforts to obtain enactment of and to implement the change no later than July 1, 1990.

The successive substantial changes will follow along with the transition of the Czechoslovak economy towards an economy based on the principles of market economy during the year 1991.

If the simple registration system has not been implemented by September 30, 1991, the Government of Czechoslovakia will consult with the Government of the United States, in accordance with Article XV, in order to agree on appropriate measures to realize the intent of this understanding.

In addition, the Government of Czechoslovakia will seek to expedite the approval of requests for authorization or registration in order not to impede the expansion of trade between the two countries.

Financial Provisions

As part of its economic liberalization process, the Government of Czechoslovakia intends to make its currency convertible as soon as possible. Until the Czechoslovak currency becomes freely convertible, the Government of Czechoslovakia, for purposes of this Agreement, will provide access to freely convertible currencies, including through auctions, on a most-favored-nation basis.

State Enterprises

The Parties recognize that Czechoslovakia has entered a period of dynamic political and economic change and that the economy of Czechoslovakia is in transition towards an economy based on the principles of market economy and free trade and that it is the policy of the Government of Czechoslovakia to diminish rapidly the role of state enterprises in the Czechoslovak economy.

The Government of Czechoslovakia maintains that state enterprises which engage in the purchase and sale involving either imports or exports of products or services are autonomous, profit-oriented and risk-taking entities and act independently from the State, which does not exercise control over them. The Government of Czechoslovakia further maintains that state ownership *per se* does not confer special powers or privileges since the state-owned enterprises operate in a competitive environment and act in a non-discriminatory manner in accordance with commercial principles and do not have the ability by their buying and selling to influence the level or direction of imports and exports.

It is understood that, with respect to international trade, state enterprises shall operate in accordance with the relevant provisions of the GATT, including, without limitation, Articles II, XI, XII, XIII, and XIV.

I have the honor to propose that this understanding be treated as an integral part of the Agreement on Trade Relations between our two countries signed on this day. I would be grateful if you would confirm that this understanding is shared by your government.

Sincerely,

Carla A. Hills.

Dr. Andrej Barcak

Minister of Foreign Trade

Washington, 12 April 1990

Dear Ambassador Hills:

I have the honor to confirm receipt of your letter which reads as follows:

Dear Mr. Minister:

I have the honor to confirm the following understanding reached between the delegations of the Czechoslovak Federative Republic and the United States of America in the course of negotiating the Agreement on Trade Relations signed on this day.

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The first measures in this respect will be taken on as broad a basis as possible in the amendment to the existing law which will be submitted by the Government of Czechoslovakia to the Federal Assembly in a short time and the Government will exert its best efforts to obtain enactment of and to implement the change no later than July 1, 1990.

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It is understood that, with respect to international trade, state enterprises shall operate in accordance with the relevant provisions of the GATT, including, without limitation, Articles II, XI, XII, XIII, and XIV.

I have the honor of confirming that my Government shares this understanding, and that this exchange of letters constitutes an integral part of that Agreement.

Sincerely,

Andrej Barcak

Minister of Foreign Trade

Government of the Czechoslovak Federative Republic

THE UNITED STATES TRADE REPRESENTATIVE

Executive Office of the President

Washington, D.C. 20506

Dear Mr. Minister:

In connection with the signing on this date of the Agreement on Trade Relations between the Government of the United States of America and the Czechoslovak Federative Republic, I have the honor to advise you that it is my understanding that, to fulfill the obligations under Article X of the Agreement, your Government intends to incorporate the following principles in your national legislation on intellectual property.

A. *Copyright Protection for Computer Programs*

Copyright protection for computer programs shall extend to all types of computer programs including application programs and operating systems which may be expressed in any language, whether in source or object code and regardless of their medium of fixation.

The duration and level of protection for computer programs shall be consistent with that provided to other literary works.

Limitations on rights expressly permitted to apply to literary works under the Berne Convention for the Protection of Literary and Artistic Works (Paris 1971) shall also be made applicable to computer programs. In addition, owners of a copy of a computer program shall be provided the right to make or authorize the making of a single copy or adaptation of that computer program provided:

(a) that such new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner; or

(b) that such a new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

B. *Protection of Integrated Circuit Layout Designs*

Protection shall be granted for any original layout design incorporated in a semiconductor integrated circuit chip, however the layout design might be fixed or encoded.

Protection need not be provided to layout designs that are commonplace in the integrated circuit industry at the time of their creation or to layout designs that are exclusively dictated by the functions of the integrated circuit to which they apply.

Protection may be conditioned on fixation or registration. If protection is conditioned on registration of the layout design, applicants will be given at least two years from first commercial exploitation of the layout design in which to apply for registration. If deposits of identifying material or other material related to the layout design are required, applicants shall not be required to disclose confidential or proprietary information unless it is essential to allow identification of the layout design.

The term of protection shall extend for at least ten years from the date of first commercial exploitation or the date of registration, if required, whichever is earlier.

The owner of the layout designs must be provided the exclusive right to do or to authorize the doing of the following:

(a) reproduce the layout design;

(b) incorporate the layout design in a semiconductor integrated circuit chip; and

(c) import or distribute a semiconductor integrated circuit chip incorporating the layout design including products incorporating such chips.

Limitations on the layout design owner's exclusive rights may be implemented solely through non-exclusive compulsory or non-voluntary licenses and only to remedy an adjudicated violation of competition laws or to address, only during its existence, a declared national emergency. A government may use semiconductor integrated circuit layout designs for governmental purposes on a non-exclusive basis. Compensation commensurate with the market value for a license of the semiconductor integrated circuit layout design must be provided when the government uses a layout design for government purposes or provides for or orders the issuance of compulsory or non-voluntary licenses during a declared national emergency. Decisions to grant compulsory or non-voluntary licenses and the compensation provided shall be subject to judicial review.

The following acts may be exempted from liability under the law:

(a) reproduction of a layout design for purposes of teaching, analysis, or evaluation in the course of preparation of a layout design that is itself original;

(b) importation and distribution of semiconductor integrated circuit chips, incorporating a protected layout design which were sold by or with the consent of the owner of the layout design; and

(c) importation or distribution of a semiconductor integrated circuit chip incorporating a protected layout design by a person who establishes that he or she did not know, and had no reasonable grounds to believe, that the layout design was protected, provided that such person is liable for reasonable royalties after notice is received.

C. *Patent Protection*

Czechoslovakia will provide a patent term of at least 20 years from filing.

Limitations on the patent owner's exclusive rights may be implemented solely through non-exclusive compulsory licenses or non-voluntary licenses and only to remedy an adjudicated violation of competition laws or to address, only during its existence, a declared national emergency. The government may use patents for governmental purposes on a non-exclusive basis provided that such use does not substantially prejudice the legitimate economic interests of the patent owner. Compensation commensurate with the market value for a license of the patent must be provided when the government uses a patent or provides for, or orders the issuance of, compulsory or non-voluntary licenses during a declared national emergency. Decisions to grant compulsory or non-voluntary licenses and the compensation provided shall be subject to judicial review.

Czechoslovakia will endeavor to provide transitional protection for products not currently patentable under Czechoslovak law which have the following characteristics:

(a) the product will be patentable in Czechoslovakia upon enactment of the proposed amendments to the patent law;

(b) a patent has been issued for the product in a country which currently grants product patents for that class of inventions; and

(c) the product has not been marketed in Czechoslovakia.

Czechoslovakia will examine the best means to implement such transitional protection. It is Czechoslovakia's intention to provide owners of products meeting these criteria the right to obtain an exclusive registration to produce and market the product in Czechoslovakia if the patent owner applies for Czechoslovak marketing approval within six months of obtaining the first marketing approval in any country and if the product meets Czechoslovak requirements for marketing approval. The term of the exclusive right to market and produce in Czechoslovakia shall be the same as the unexpired term of the patent in the country of original registration.

D. *Protection of Trade Secrets*

Protection will be provided for trade secrets,[1] whether such a trade secret is of a technical or commercial nature, provided that it:

(a) has actual or potential commercial value from not being known to the relevant public;

(b) is not readily accessible in a lawful manner; and

(c) has been subject to reasonable efforts, under the circumstances, by the rightful owner to maintain its secrecy.

The appropriation, disclosure, and use of trade secrets without the consent of the owner shall be unlawful.

Protection of trade secrets shall be available so long as the conditions set forth above are met.

The voluntary licensing of trade secrets shall not be impeded or discouraged by the imposition of excessive or discriminatory conditions on such licenses or conditions which dilute the value of the trade secrets.

If the Government of Czechoslovakia requires that trade secrets be submitted to carry out governmental functions, then that trade secret shall not be used for the commercial or competitive benefit of the government or of any person other than the owner of the trade secret, except with the owner's consent, on payment of the reasonable value of the use, or if a reasonable period of exclusive use is given to the trade secret owner.

The Parties may disclose such trade secrets, or require that the owner of the trade secrets disclose them to third parties, only with the owner's consent or to the degree required to carry out necessary government functions; or to protect human health or safety or to protect the environment when the owner is given an opportunity to enter into confidentiality agreements with any non-governmental agency receiving the trade secrets to prevent further disclosure.

I have the further honor to communicate to you my understanding that this letter and your letter of confirmation in reply, constitute an integral part of the Agreement.

Sincerely,

Carla A. Hills.

[1] "Trade secrets" include any formula, device, compilation of information, computer program, pattern, technique or process that is used or could be used in the trade secret owner's business and has actual or potential economic value from not being generally known to competitors or in the relevant industry.

Dr. Andrej Barcak

Minister of Foreign Trade

Washington, 12 April 1990

Dear Ambassador Hills:

I have the honor to confirm receipt of your letter which reads as follows:

Dear Mr. Minister:

In connection with the signing on this date of the Agreement on Trade Relations between the Government of the United States of America and the Czechoslovak Federative Republic, I have the honor to advise you that it is my understanding that, to fulfill the obligations under Article X of the Agreement, your Government intends to incorporate the following principles in your national legislation on intellectual property.

A. Copyright Protection for Computer Programs

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The duration and level of protection for computer programs shall be consistent with that provided to other literary works.

Limitations on rights expressly permitted to apply to literary works under the Berne Convention for the Protection of Literary and Artistic Works (Paris 1971) shall also be made applicable to computer programs. In addition, owners of a copy of a computer program shall be provided the right to make or authorize the making of a single copy or adaptation of that computer program provided:

(a) that such new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner; or

(b) that such a new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

B. *Protection of Integrated Circuit Layout Designs*

Protection shall be granted for any original layout design incorporated in a semiconductor integrated circuit chip, however the layout design might be fixed or encoded.

Protection need not be provided to layout designs that are commonplace in the integrated circuit industry at the time of their creation or to layout designs that are exclusively dictated by the functions of the integrated circuit to which they apply.

Protection may be conditioned on fixation or registration. If protection is conditioned on registration of the layout design, applicants will be given at least two years from first commercial exploitation of the layout design in which to apply for registration. If deposits of identifying material or other material related to the layout design are required, applicants shall not be required to disclose confidential or proprietary information unless it is essential to allow identification of the layout design.

The term of protection shall extend for at least ten years from the date of first commercial exploitation or the date of registration, if required, whichever is earlier.

The owner of the layout designs must be provided the exclusive right to do or to authorize the doing of the following:

(a) reproduce the layout design;

(b) incorporate the layout design in a semiconductor integrated circuit chip; and

(c) import or distribute a semiconductor integrated circuit chip incorporating the layout design including products incorporating such chips.

Limitations on the layout design owner's exclusive rights may be implemented solely through non-exclusive compulsory or non-voluntary licenses and only to remedy an adjudicated violation of competition laws or to address, only during its existence, a declared national emergency. A government may use semiconductor integrated circuit layout designs for governmental purposes on a non-exclusive basis. Compensation commensurate with the market value for a license of the semiconductor integrated circuit layout design must be provided when the government uses a layout design for government purposes or provides for or orders the issuance of compulsory or non-voluntary licenses during a declared national emergency. Decisions to grant compulsory or non-voluntary licenses and the compensation provided shall be subject to judicial review.

The following acts may be exempted from liability under the law:

(a) reproduction of a layout design for purposes of teaching, analysis, or evaluation in the course of preparation of a layout design that is itself original;

(b) importation and distribution of semiconductor integrated circuit chips, incorporating a protected layout design which were sold by or with the consent of the owner of the layout design; and

(c) importation or distribution of a semiconductor integrated circuit chip incorporating a protected layout design by a person who establishes that he or she did not know, and had no reasonable grounds to believe, that the layout design was protected, provided that such person is liable for reasonable royalties after notice is received.

C. *Patent Protection*

Czechoslovakia will provide a patent term of at least 20 years from filing.

Limitations on the patent owner's exclusive rights may be implemented solely through non-exclusive compulsory licenses or non-voluntary licenses and only to remedy an adjudicated violation of competition laws or to address, only during its existence, a declared national emergency. The government may use patents for governmental purposes on a non-exclusive basis provided that such use does not substantially prejudice the legitimate economic interests of the patent owner. Compensation commensurate with the market value for a license of the patent must be provided when the government uses a patent or provides for, or orders the issuance of, compulsory or non-voluntary licenses during a declared national emergency. Decisions to grant compulsory or non-voluntary licenses and the compensation provided shall be subject to judicial review.

Czechoslovakia will endeavor to provide transitional protection for products not currently patentable under Czechoslovak law which have the following characteristics:

(a) the product will be patentable in Czechoslovakia upon enactment of the proposed amendments to the patent law;

(b) a patent has been issued for the product in a country which currently grants product patents for that class of inventions; and

(c) the product has not been marketed in Czechoslovakia.

Czechoslovakia will examine the best means to implement such transitional protection. It is Czechoslovakia's intention to provide owners of products meeting these criteria the right to obtain an exclusive registration to produce and market the product in Czechoslovakia if the patent owner applies for Czechoslovak marketing approval within six months of obtaining the first marketing approval in any country and if the product meets Czechoslovak requirements for marketing approval. The term of the exclusive right to market

and produce in Czechoslovakia shall be the same as the unexpired term of the patent in the country of original registration.

D. *Protection of Trade Secrets*

Protection will be provided for trade secrets,[1] whether such a trade secret is of a technical or commercial nature, provided that it:

(a) has actual or potential commercial value from not being known to the relevant public;

(b) is not readily accessible in a lawful manner; and

(c) has been subject to reasonable efforts, under the circumstances, by the rightful owner to maintain its secrecy.

The appropriation, disclosure, and use of trade secrets without the consent of the owner shall be unlawful.

Protection of trade secrets shall be available so long as the conditions set forth above are met.

The voluntary licensing of trade secrets shall not be impeded or discouraged by the imposition of excessive or discriminatory conditions on such licenses or conditions which dilute the value of the trade secrets.

If the Government of Czechoslovakia requires that trade secrets be submitted to carry out governmental functions, then that trade secret shall not be used for the commercial or competitive benefit of the government or of any person other than the owner of the trade secret, except with the owner's consent, on payment of the reasonable value of the use, or if a reasonable period of exclusive use is given to the trade secret owner.

The Parties may disclose such trade secrets, or require that the owner of the trade secrets disclose them to third parties, only with the owner's consent or to the degree required to carry out necessary government functions; or to protect human health or safety or to protect the environment when the owner is given an opportunity to enter into confidentiality agreements with any non-governmental agency receiving the trade secrets to prevent further disclosure.

I have the honor to confirm that my Government shares this understanding, and that this exchange of letters constitutes an integral part of the Trade Agreement mentioned above.

Sincerely,

Andrej Barcak

Minister of Foreign Trade

Government of the Czechoslovak Federative Republic

[1] "Trade secrets" include any formula, device, compilation of information, computer program, pattern, technique or process that is used or could be used in the trade secret owner's business and has actual or potential economic value from not being generally known to competitors or in the relevant industry.

UNITED STATES DEPARTMENT OF COMMERCE

United States Travel and Tourism Administration

Washington, D.C. 20230

Dear Mr. Minister:

I have the honor to confirm the following understanding reached between the delegations of Czechoslovak Federative Republic and the United States of America in the course of negotiating the Agreement on Trade Relations, signed this day.

The Parties recognize the need to encourage and promote the growth of tourism and travel-related investment and trade between the United States of America and Czechoslovakia.

The Parties recognize the benefits to both economies of increased tourism and travel-related investment in and trade between their two territories.

Each Party shall seek permission of the other Party prior to the establishment of official, governmental tourism promotion offices in the other's territory. Permission to open official tourism promotion offices or field offices, shall be as agreed upon by the Parties, and subject to the applicable laws, regulations and policies of the host country. Official tourism offices opened by either Party shall be operated on a noncommercial basis. Official tourism promotion offices and the personnel assigned to them shall not function as agents or principals in commercial transactions, enter into contractual agreements on behalf of commercial organizations or engage in other commercial activities. Such offices shall not sell services to the public or otherwise compete with private sector travel agents or tour operators of the host country. Nothing in this side letter shall obligate either Party to open such offices in the territory of the other.

Private and governmentally-owned commercial tourism enterprises shall be treated as private commercial enterprises fully subject to all applicable laws and regulations of the host country.

Each Party shall ensure, within the scope of its legal authority, that any company owned, controlled or administered by that Party, or any joint venture therewith, which effectively controls a significant portion of the supply of any tourism or travel-related service in the territory of that Party shall provide those services to nationals and companies of the other Party in a fair and equitable manner and on a most-favored-nation basis.

Subject to applicable laws, nationals and companies of the United States and of Czechoslovakia shall be permitted to act as agents for United States, Czechoslovak, and third country providers of tourism and travel-related services in the territory of either Party.

Nothing in this letter or in the Agreement on Trade Relations shall be construed to mean that tourism and travel-related services shall not receive the benefits from that Agreement as fully as all other industries and sectors.

The Parties agree to give consideration to the negotiation of a separate agreement on tourism and travel-related services.

I have the honor to propose that this understanding be treated as an integral part of the Agreement on Trade Relations. I would be grateful if you would confirm that this understanding is shared by your Government.

Sincerely,

Wylie H. Whisonant, Jr.

Deputy Under Secretary

Dr. Andrej Barcak

Minister of Foreign Trade

Washington, 12 April 1990

Dear Mr. Whisonant:

I have the honor to confirm receipt of your letter which reads as follows:

Dear Mr. Minister:

I have the honor to confirm the following understanding reached between the delegations of Czechoslovak Federative Republic and the United States of America in the course of negotiating the Agreement on Trade Relations, signed this day.

The Parties recognize the need to encourage and promote the growth of tourism and travel-related investment and trade between the United States of America and Czechoslovakia.

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Nothing in this letter or in the Agreement on Trade Relations shall be construed to mean that tourism and travel-related services shall not receive the benefits from that Agreement as fully as all other industries and sectors.

The Parties agree to give consideration to the negotiation of a separate agreement on tourism and travel-related services.

I have the honor of confirming that my Government shares this understanding, and that this exchange of letters constitutes an integral part of that Agreement.

Sincerely,

Andrej Barcak

Minister of Foreign Trade

Government of the Czechoslovak Federative Republic

TERMS OF REFERENCE: THE U.S.-CZECHOSLOVAK JOINT COMMERCIAL COMMISSION

The U.S.-Czechoslovak Joint Commercial Commission is established by the governments of Czechoslovakia and the United States to facilitate the development of commercial relations and related economic matters between the Czechoslovak Federative Republic and the United States of America.

The Commission shall work and formulate recommendations on the basis of mutual consent.

The Commission shall:

—Review operation of The U.S.-Czechoslovak Trade Agreement and make recommendations for achieving its objectives in order to obtain the maximum benefit therefrom;

—Exchange information about amendments and developments in the regulations of the United States and Czechoslovakia affecting trade under the U.S.-Czechoslovak Trade Agreement;

—Consider measures which would develop and diversify trade and commercial cooperation. These measures shall include but are not limited to encouraging and supporting contracts and cooperation between businesses of both countries, and examining ways to improve the development of direct contacts between firms established in the United States and Czechoslovakia;

—Monitor and exchange views on U.S.-Czechoslovak commercial relations; identify and where possible recommend solutions to issues of interest to both Parties;

—Provide a forum for exchanging information in areas of commercial, industrial and technological cooperation, where they have an impact on trade and cooperation; and

—Consider other steps which could be taken to facilitate and encourage the growth and development of commercial relations and related economic matters between the two countries.

The Commission shall be comprised of two sections, a U.S. section and a Czechoslovak section. Each section shall be composed of a chairman and other government officials as designated by each Party.

The Commission shall meet as often as mutually agreed by the Parties, alternatively in Washington and Prague.

Appropriate senior-level officials from the U.S. Department of Commerce and the Czechoslovak Ministry for Foreign Trade shall act as co-chairmen of the Commission, and shall head their respective sections; each section of the Commission shall include other government officials as designated by each Party.

The Commission shall work on the basis of mutual agreement. The Commission shall, as necessary, adopt rules of procedure and work programs. The Commission may, as mutually agreed, establish joint working groups to consider specific matters. These working groups shall function in accordance with the instructions of the Commission.

Each section shall have an Executive Secretary, named by the chairman, who shall arrange the work of the respective section of the Commission. The Executive Secretary shall arrange the work of the respective section of the Commission, and perform the tasks of an organizational or administrative nature connected with the meetings of the Commission.

The Executive Secretaries shall communicate with each other as necessary to arrange Commission meetings and to perform other functions. Agendas for Commission meetings shall be agreed upon not later than one month prior to the meeting. The meeting shall consider matters included in this agenda, as

well as further matters which may be added to the agenda by mutual agreement.

The Commission and its working groups shall work on the basis of mutual agreement. Agreed minutes signed by the co-chairmen of the Commission shall be kept for each meeting of the Commission, and shall be made public by each side. The parties shall advise each other whenever measures and recommendations agreed to are subject to subsequent approval of their government.

Any document mutually agreed upon during the work of the Commission shall be in the English and Czech languages, each language being equally authentic.

Expenses incidental to the meetings of the Commission and any working group established by the Commission shall be borne by the host country. Travel expenses from one country to the other, as well as living and other personal expenses of representatives participating in meetings of the Commission and any working group of the Commission shall be borne by the party which sends such persons to represent it.

Each section may invite advisers and experts to participate at any meeting of the Commission or its working groups, except that such participation must be mutually agreed by the parties in advance of the meeting.

The terms of reference of the Commission may be amended by mutual agreement of the parties at any meeting or during the periods between the meetings of the Commission.

Done in Washington, D.C., April 12, 1990, in two copies, in the English and Czech languages, both texts being equally authentic.

FOR THE CZECHOSLOVAK FEDERATIVE REPUBLIC

Andrej Barcak

Minister for Foreign Trade

FOR THE UNITED STATES OF AMERICA

J. Michael Farren

Under Secretary for International Trade

U.S. Department of Commerce

[FR Doc. 90-21324
Filed 9-10-90; 3:00 pm]
Billing code 3190-01-M

federal register

Wednesday
September 12, 1990

Part V

Department of the Interior

National Park Service

36 CFR Part 79

Curation of Federally-Owned and Administered Archeological Collections; Proposed Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 79

Curation of Federally-Owned and Administered Archeological Collections

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the final regulation for the curation of federally-owned and administered archeological collections. It would establish procedures for Federal agencies to provide both information on the disposition of collections and copies of certain associated records to pertinent State officials and other appropriate parties. In addition, it would establish procedures for Federal agencies to discard, under certain circumstances, particular material remains that may be in collections subject to this part.

DATES: Comments on this proposed rule must be received on or before December 11, 1990.

ADDRESSES: Comments on this proposed rule should be addressed to Douglas H. Scovill, Acting Departmental Consulting Archeologist, National Park Service, P.O. Box 37127, Washington, DC 20013-7127, or delivered to Room 4127C, 1100 L Street, NW., Washington, DC, between 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Francis P. McManamon (Chief, Archeological Assistance Division) at 202-343-4101 or FTS 343-4101.

SUPPLEMENTARY INFORMATION:

Background

The final regulation 36 CFR part 79 establishes definitions, standards, procedures, and guidelines to be followed by Federal agencies to preserve collections of prehistoric and historic material remains, and associated records, recovered in conjunction with Federal projects and programs under certain Federal statutes. This proposed rule would amend § 79.5 and would add § 79.12 to part 79.

Section 79.5 sets forth the responsibilities of Federal Agency Officials for the long-term management and preservation of collections subject to part 79. Paragraph (c) of § 79.5 requires that certain administrative records on the disposition of collections subject to part 79 be maintained by the Federal Agency Official. It does not, however, call for the Federal Agency Official to provide information on the disposition of collections or copies of certain associated records to pertinent non-Federal parties. For example, State and Tribal Historic Preservation Officers should be provided with information about prehistoric and historic resources on lands within their respective States and reservations. In addition, researchers and scholars should have access to information about prehistoric and historic resources that they are studying. This proposed rule would address this matter by adding paragraph (d) to § 79.5.

Proposed paragraph 79.5(d)(1) would call for information on the disposition of collections and copies of certain associated records to be provided to pertinent State officials and other appropriate parties. Proposed paragraph 79.5(d)(2) would identify those State officials and other parties who should receive the information and records. Proposed paragraph 79.5(d)(3) would call for the Federal Agency Official to submit copies of final reports of federally-authorized surveys, excavations and other studies to a national depository of reports. Proposed paragraph 79.5(d)(4) would call for certain information on final reports of such studies to be submitted for inclusion in the National Archeological Database, which is administered by the National Park Service.

As currently codified, 36 CFR part 79 does not provide a mechanism for Federal agencies to discard material remains, which may be in collections subject to the part, that have limited or no scientific value. By adding a new § 79.12 to part 79, this proposed rule would establish procedures to discard, under certain circumstances, particular material remains.

Proposed paragraph 79.12(a) would provide Federal agencies with the discretion to discard, under certain circumstances, particular material remains. Proposed paragraph 79.12(b) would set forth four categories of material remains that would be appropriate for a Federal Agency Official to discard.[1] The categories are specific and narrowly defined to ensure that material remains that are archeological or historic in nature are not inadvertently or casually discarded.

Proposed paragraphs 79.12(c) and (d) would establish procedures by which the Federal Agency Official would make and document determinations to discard particular material remains. Proposed paragraph 79.12(e) would provide a means for the Federal agency's determination to discard material remains to be reviewed by the Department of the Interior's Departmental Consulting Archeologist. Proposed paragraphs 79.12(f) through (i) would set forth the requirements under which material remains to be discarded would be disposed of. Proposed paragraph 79.12(j) would call for pertinent records on the collection to be amended to indicate any deaccessions and discards, and for certain documentation on the discard to be retained.

Preparation of the Rulemaking

The final regulation 36 CFR part 79 for the curation of federally-owned and administered archeological collections appears as 90-21348 published elsewhere in this issue of the **Federal Register**. The regulation had been published for public comment as a proposed rule on August 28, 1987 (52 FR 32740). A number of commenters recommended the changes being proposed in this amendment. Because the procedures being proposed were not contained in the proposed rule that was published in 1987, they are being issued hereinbelow as a proposed rule to allow for public review and comment.

The National Park Service seeks comments and suggestions from Federal, State and local Government agencies, Indian tribes, repositories, professional organizataions, other interested organizations, groups, and the public on these proposed amendments to 36 CFR part 79.

Authorship

The author of this rulemaking is Michele C. Aubry (Archeologist and Progam Analyst) in the office of the Departmental Consulting Archeologist, National Park Service, Washington, DC.

Compliance with Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a

[1] The procedure that would be established under this proposed amendment is not intended to address the complex issue of repatriation of human remains and funerary objects. A procedure for Federal agencies to release particular human skeletal remains and objects excavated or removed from public lands into the custody of the pertinent Indian tribe or other Native American group is being drafted by the Departments of the Interior, Agriculture, Defense, and the Tennessee Valley Authority as part of an amendment to uniform regulations (43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229) implementing the Archaeological Resources Protection Act (16 U.S.C. 470*aa-mm*). Nevertheless, human skeletal remains and objects that would meet any of the four categories of material remains set forth in proposed paragraph 79.12(b) may be appropriate for discard under 36 CFR part 79.

significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Compliance with the Paperwork Reduction Act

This rules does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance with the National Environmental Policy Act

Federal agencies that conduct or authorize archeological investigations are required by law to maintain and preserve the resulting collections of artifacts, specimens and associated records. Issuance of this document will result in more consistent, systematic and professional care of those collections. The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment under the National Environmental Policy Act (42 U.S.C. 4321–4347). In addition, the National Park Service has determined that this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act by Departmental regulations in 516 DM 2. As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 79

Archeology, Archives and records, Historic preservation, Indians-lands, Museums, Public lands.

Dated: June 25, 1990.

Constance B. Harriman,

Assistant Secretary for Fish and Wildlife and Parks.

For the reasons set out in the preamble, the Department of the Interior proposes to amend title 36, chapter I of the Code of Federal Regulations by amending part 79 as follows:

PART 79—CURATION OF FEDERALLY-OWNED AND ADMINISTERED ARCHEOLOGICAL COLLECTIONS

1. The authority citation for part 79 continues to read as follows:

Authority: 16 U.S.C. 470*aa-mm*, 16 U.S.C. 470 *et seq.*

2. Section 79.5 is amended by adding paragraph (d) to read as follows:

§ 79.5 Management and preservation of collections.

* * * * *

(d) *Distribution of records to other parties.* (1) For each new collection and, upon request, for each preexisting collection, the Federal Agency Official shall ensure that pertinent State officials and other parties, as appropriate, are provided with:

(i) The name and location of the repository where the collection is deposited;

(ii) Copies of any site forms and maps of the prehistoric or historic resource that was surveyed, excavated or otherwise studied;

(iii) Copies of any final reports of the survey, excavation or other study;

(iv) Upon request, copies of other appropriate records; and

(v) In accordance with such terms and conditions as are developed pursuant to § 79.10(d) of this part, instructions for restricting access to site forms, maps, final reports, and other records being provided that contain information relating to the nature, location or character of a prehistoric or historic resource.

(2) Pertinent State officials and other parties, as appropriate, would include but not be limited to the:

(i) State Historic Preservation Officer;

(ii) State Archeologist;

(iii) When the State Historic Preservation Officer does not maintain the State's official site files, the official who represents the State agency or institution that does maintain such files;

(iv) When the collection is from a site on Indian lands, the Tribal Official and the Tribal Historic Preservation Officer, if any, of the Indian tribe that owns or has jurisdiction over such lands;

(v) When the collection is from a site on public lands that the Federal Agency Official has determined is of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such lands, the Tribal Official and the Tribal Historic Preservation Officer, if any, of the pertinent Indian tribe; and

(vi) When the collection is from a site on State, local or privately owned lands, the owner.

(3) For each new collection, after removing any information on the nature, location or character of a prehistoric or historic resource to which access is restricted pursuant to § 79.10(d) of this part, the Federal Agency Official shall submit copies of any final reports of the survey, excavation or other study to the:

(i) National Technical Information Service;

(ii) Defense Technical Information Service;

(iii) Library of Congress; or

(iv) Other appropriate national depository for reports.

(4) For each new collection and, upon request, for each preexisting collection, the Federal Agency Official shall ensure that the information required by the National Archeological Database, administered by the National Park Service, about final reports of the survey, excavation or other study is submitted for inclusion in the National Archeological Database. Procedures for submitting the required information are available from the Archeological Assistance Division, National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

* * * * *

3. A new § 79.12 is added to read as follows:

§ 79.12 Procedures to discard material remains.

(a) Under certain circumstances, the Federal Agency Official may determine that particular material remains in a collection subject to this part need not be preserved and maintained in a repository, and may be discarded.

(b) It may be appropriate to discard material remains when:

(1) The material remains are not archeological or historic in nature and were inadvertently collected and included in the collection;

(2) Material remains subject to the Archaeological Resources Protection Act (16 U.S.C. 470*aa–mm*) are not or are no longer of archeological interest, as determined under uniform regulations 43 CFR part 7, 36 CFR part 296, 18 CFR part 1312, and 32 CFR part 229;

(3) The material remains, while archeological or historic in nature, consist of large quantities of bulky, highly redundant, non-diagnostic items that have limited potential for further research; or

(4) The material remains, while archeological or historic in nature, are a hazard to human health or safety.

(c) Prior to making a determination that it may be appropriate to discard particular material remains, the Federal Agency Official shall ensure that the following procedures are followed:

(1) The material remains are professionally evaluated and documented, consistent with the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716, Sept. 29, 1983), for the purpose of determining whether they meet the requirements of paragraph (b)(1), (b)(2), (b)(3) or (b)(4) of this section;

(2) The Federal agency's principal archeologist or, in the absence of an agency principal archeologist, the Department of the Interior's Departmental Consulting Archeologist, shall review the documentation prepared under paragraph (c)(1) of this

section and make recommendations to the Federal Agency Official concerning the adequacy of the evaluation and documentation and the appropriateness of the proposed discard;

(3) When the material remains are from a site on Indian lands, the Indian landowner and the Indian tribe having jurisdiction over the lands are notified of the proposed discard;

(4) When the material remains are from a site on State, local or privately owned lands, the owner is notified of the proposed discard;

(5) When the material remains are from a site on public lands that the Federal Agency Official has determined is of religious or cultural importance to any Indian tribe having aboriginal or historic ties to such lands, the pertinent Indian tribe or other group is provided with an opportunity to comment on the proposed discard;

(6) The State Historic Preservation Officer and other appropriate State and Federal agencies, universities, museums, scientific and educational institutions, and interested persons are provided with an opportunity to comment on the proposed discard; and

(7) When the collection is included in or eligible for inclusion in the National Register of Historic Places, the discard action is reviewed to determine whether it is subject to section 106 of the National Historic Preservation Act (16 U.S.C. 470*f*).

(d) The Federal Agency Official shall fully document determinations to discard material remains and any terms and conditions to be applied. The Federal Agency Official's determinations shall be based upon:

(1) A professional evaluation of the material remains, conducted pursuant to paragraph (c)(1) of this section, that the remains meet the requirements of paragraph (b)(1), (b)(2), (b)(3) or (b)(4) of this section;

(2) The recommendations of the agency's principal archeologist or the Department of the Interior's Departmental Consulting Archeologist, as appropriate, provided in accordance with paragraph (c)(2) of this section;

(3) The consent of any non-Federal owners; and

(4) Any consultations performed pursuant to paragraphs (c)(5), (c)(6) and (c)(7) of this section.

(e) Any interested person may request in writing that the Department of the Interior's Departmental Consulting Archeologist review any Federal agency's determination to discard material remains. Two copies of the request should be sent to the Departmental Consulting Archeologist, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. The request should document why the requester disagrees with the Federal Agency Official's determination or the terms and conditions to be applied. The Departmental Consulting Archeologist shall review the request and, if appropriate, the Federal Agency Official's determination and its supporting documentation. Based on this review and within 60 days of the receipt of the request, the Departmental Consulting Archeologist shall prepare and transmit to the head of the Federal agency a final professional recommendation for further consideration.

(f) Federally-owned material remains to be discarded shall be disposed of in accordance with the Federal Property and Administrative Services Act (40 U.S.C. 484), its implementing regulation (41 CFR part 101), any agency specific regulations on the management of Federal property, any agency specific statutes and regulations on the management of museum collections, and such terms and conditions as may be appropriate.

(g) Indian-owned material remains to be discarded shall be disposed of in accordance with such terms and conditions as may be requested by the Indian landowner and the Indian tribe having jurisdiction over the lands.

(h) State, local, and privately owned material remains to be discarded shall be disposed of in accordance with such terms and conditions as may be requested by the owner.

(i) When the material remains to be discarded consist of bulky, highly redundant, non-diagnostic items, a sample shall be retained that is representative of the remains and large enough to allow for destructive analysis in the future without substantially depleting the sample.

(j) The accession, catalog and artifact inventory list records for the collection from which the material remains are discarded shall be amended to indicate which material remains are deaccessioned and discarded, the basis for the discard, and the manner in which they are discarded. The documentation prepared under paragraphs (c) and (d) of this section shall be retained as a part of the collection.

[FR Doc. 90–21349 Filed 9–11–90; 8:45 am]
BILLING CODE 4310–70–M

federal register

Wednesday
September 12, 1990

Part VI

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Small Industrial-Commercial-Institutional Steam Generating Units; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3808-5]

RIN 2060-AB95

Standards of Performance for New Stationary Sources; Small Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's action promulgates standards of performance for new, modified, and reconstructed small industrial-commercial-institutional steam generating units with a maximum design heat input capacity of 29 megawatts (MW) (100 million Btu per hour (Btu/hr) or less, but greater than or equal to 2.9 MW (10 million Btu/hr). These standards, codified in subpart Dc of 40 CFR part 60, limit emissions of sulfur dioxide (SO_2) and particulate matter (PM) from these sources. This **Federal Register** notice also announces the EPA's decision not to regulate nitrogen oxides (NO_x) emissions from these units. Standards of performance limiting emissions of SO_2, PM, and NO_x from small industrial-commercial-institutional steam generating units were proposed in the **Federal Register** on June 9, 1989 (54 FR 24792).

The standards implement section 111 of the Clean Air Act (CAA) and are based on the Administrator's determination that small industrial-commercial-institutional steam generating units cause, or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new, modified, and reconstructed small industrial-commercial-institutional steam generating units to control emissions to the level achievable by the best demonstrated technological system of continuous emission reduction considering costs, nonair quality health and environmental impacts, and energy requirements.

EFFECTIVE DATE: September 12, 1990.

Under section 307(b)(1) of the CAA, judicial review of the actions taken by this notice is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under Section 307(b)(2) of the CAA, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

INCORPORATION BY REFERENCE: The incorporation by reference of certain publications in these standards is approved by the Director of the Office of the Federal Register as of September 12, 1990.

ADDRESSES: *Background Information Document.* A background information document (BID) for the promulgated standards containing: (1) A summary of all the public comments made on the proposed standards and the Administrator's response to the comments, (2) a summary of the changes made to the standards since proposal, and (3) the final Environmental Impact Statement, which summarizes the impacts of the standards, may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Small Industrial-Commercial-Institutional Steam Generating Units—Background Information for Promulgated Standards," EPA-450/3-90-016, August 1990.

Docket. Docket No. A-86-02, containing information considered by EPA in development of the promulgated standards, is available for public inspection between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket, Room M-1500, First floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Copland, telephone number (919) 541-5265 or Mr. Fred Porter, telephone number (919) 541-5251, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in reading the preamble of the final standards.

I. Summary of the Standards

Standards of performance for new stationary sources established under section 111 of the CAA reflect application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impacts and energy requirements) the Administrator determines has been adequately demonstrated (section 111(a)(1)). For convenience, this will be referred to as "best demonstrated technology."

Figures 1 and 2 depict the major provisions of the SO_2 and PM standards, respectively, for information purposes only. It shoud be noted that the figures do not attempt to show all of the requirements of the standards, only percent reduction requirements, emission limits, and opacity limits, as applicable. Other requirements, such as monitoring, performance testing, and reporting and recordkeeping requirements, are not shown. The regulation should be relied on for a full and comprehensive statement of the regulatory requirements under this subpart.

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Figure 1 -- Small Steam Generating Units NSPS - Summary of SO_2 Standards*

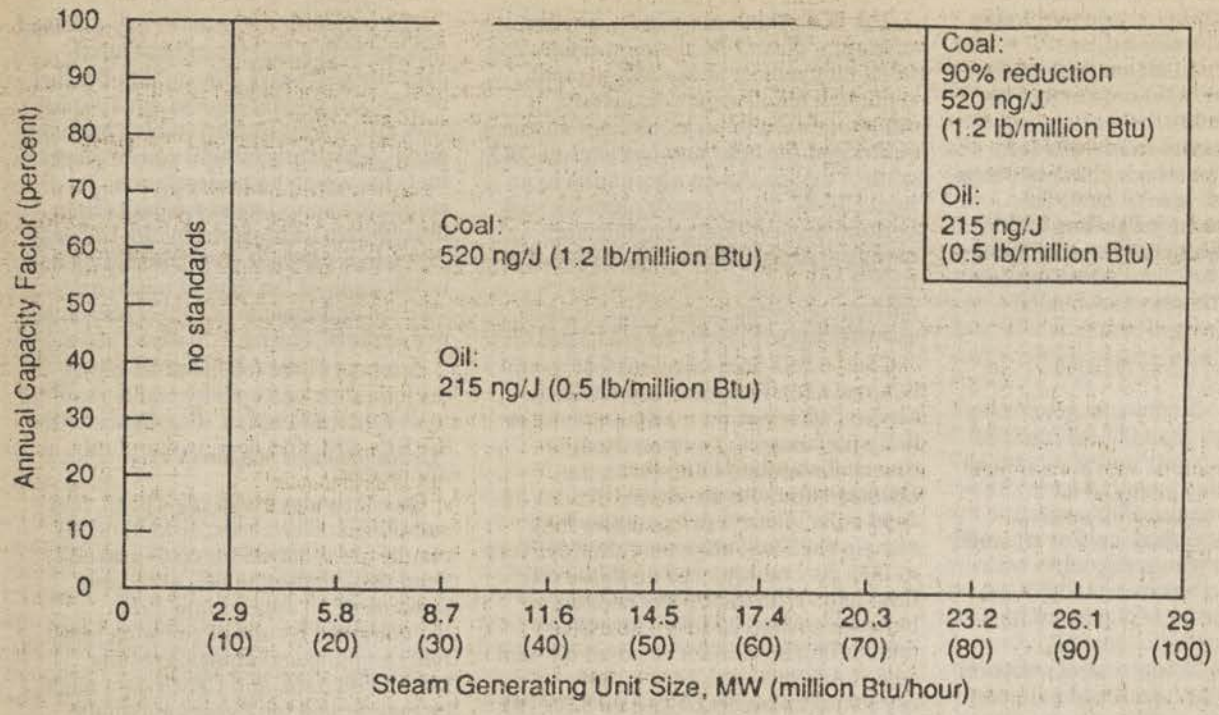
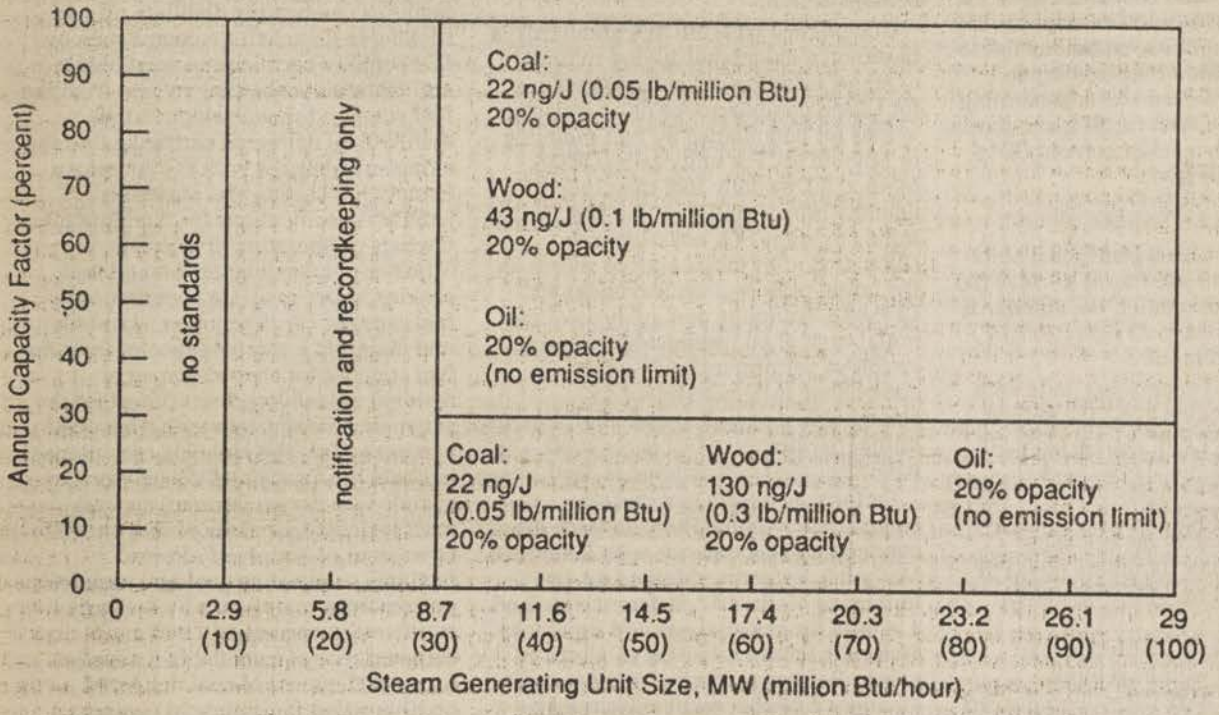


Figure 2 -- Small Steam Generating Units NSPS - Summary of PM Standards*



* The regulation should be relied on for a full and comprehensive statement of the regulatory requirements under this subpart.

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A. Applicability

The new source performance standards (NSPS) being adopted today apply to all new, modified, or reconstructed small steam generating units with a heat input capacity of 29 MW (100 million Btu/hr) or less, but greater than or eqaul to 2.9 MW (10 million Btu/hr) for which construction is commenced after June 9, 1989. The definition of "steam generating unit" includes all devices that combust fuel and produce steam, heat water, or heat other fluids which are used as heat transfer media.

B. Standards for Sulfur Dioxide

For small coal-fired steam generating units with greater than (75 million Btu/hr) heat input capacity and greater than 55 percent annual capacity factor, the SO_2 standards require a 90-percent reduction in SO_2 emissions. For all small coal-fired steam generating units with heat input capacities from 2.9 MW (10 million Btu/hr) to 29 MW (100 million Btu/hr), the standards limit SO_2 emissions to 520 nanograms of pollutant per joule (ng/J) [1.2 pounds of pollutant per million Btu (1b/million Btu)] heat input.

For small oil-fired steam generating units with heat input capacities from 2.9 MW to 29 MW (10 to 100 million Btu/hr), the standards limit SO_2 emissions to 215 ng/J (0.50 lb/million Btu) heat input. Alternatively, oil-fired steam generating units can comply with the SO_2 standards by firing oil with a sulfur content of 0.5 weight percent or less.

C. Standards for Particulate Matter

For coal-fired steam generating units with heat input capacities of 8.7 MW (30 million Btu/hr) or greater, the standards limit PM emissions to 22 ng/J (0.05 lb/million Btu) heat input.

For wood-fired generating units with heat input capacities of 8.7 (30 million Btu/hr) or greater and annual capacity factors greater than 30 percent, the standards limit PM emissions to 43 ng/J (0.10 lb/million Btu) heat input. For units with annual capacity factors of 30 percent or less, the standards limit PM emissions to 130 ng/J (0.30 lb/million Btu) heat input.

Coal-, wood- and oil-fired steam generating units with heat input capacities of 8.7 MW (30 million Btu/hr) or greater are subject to an opacity limit of 20 percent.

d. Standards for Nitrogen Oxides

No standards for NO_x are being promulgated. (See section V of this notice).

E. Performance Testing and Monitoring Requirements

The SO_2 standards require owners or operators of coal-fired steam generating units that subject to the SO_2 percent reduction requirements to install continuous emission monitoring systems (CEMS) at the inlet and outlet of the SO_2 control device. As an alternative to an inlet CEMS, the owner or operator may perform as-fired fuel sampling and analysis. As an alternative to an outlet CEMS, the owner or operator may perform emission measurements in accordance with Reference Method 6B.

Coal- or oil-fired units subject to an SO_2 emission limit may use a CEMS, Method 6B emission measurements, or daily fuel sampling and analysis to demonstrate compliance with the emission limit. As an alternative for oil-fired units, owners or operators may sample each fuel shipment after delivery to their fuel tank(s). For distillate oil-fired units with heat input capacities between 2.9 and 29 MW (10 and 100 million Btu/hr) and for residual oil- and coal-fired units with heat input capacities between 2.9 and 8.7 MW (10 and 30 million Btu/hr), supplier certification of sulfur content is allowed as an alternative compliance demonstration.

Compliance with the SO_2 standards is based on a calculated 30-day rolling average, using hourly emission values for CEMS compliance or daily emission values for compliance by fuel sampling or Method 6B. For units using CEMS, Method 6B, or daily fuel sampling to demonstrate compliance, the first 30-day rolling average SO_2 emission rate calculated after initial startup serves as the initial performance test under 40 CFR 60.8. Sampling and analysis of the initial tank of oil combusted is used as an initial performance test where compliance is demonstrated by shipment fuel sampling and analysis. No initital performance test is required where supplier certification is used.

Performance tests to determine compliance with the PM standards are conducted in accordance with Reference Method 5, Reference Method 5B, or Reference Method 17. Reference Method 3 is used for gas analysis and Reference Method 1 for the selection of sampling points. Reference Method 9 (a 6-minute average of 24 observations) is used to determine compliance with the opacity standards. Continuous opacity monitoring is required for all small coal-, residual oil- and wood-fired steam generating units with heat input capacities of 8.7 MW (30 million Btu/hr) or greater.

F. Reporting and Recordkeeping Requirements

The owner or operator of any affected facility with a maximum heat input capacity of 29 MW (100 million Btu/hr) or less, but greater than or equal to 2.9 MW (10 million Btu/hr) (which includes units combusting natural gas or other fuels for which no performance standards apply) must submit certain information as required by the General Provisions (40 CFR 60.11), including notification of the date of initial unit startup, and must maintain certain fuel use records.

A report of the results of an initial performance and opacity test is required to demonstrate initial compliance with the SO_2, PM, and opacity standards, as applicable.

Quarterly reports of the CEMS, fuel sampling and analysis, or Method 6B results are required for coal- and oil-fired units under the SO_2 standards. Records of all appropriate data, including the results of emission tests, fuel sampling and analysis results, Method 6B data, and CEMS data must be maintained for 2 years and made available for inspection by enforcement personnel.

Owners or operators of affected facilities combusting distillate oil and seeking to demonstrate compliance by fuel supplier certification must obtain and maintain a shipping receipt from the fuel supplier for each shipment of distillate oil delivered certifying that the shipment complies with the American Society for Testing and Materials (ASTM) specifications for distillate oil. Owners or operators of affected facilities combusting residual oil and seeking to demonstrate compliance by fuel supplier certification must obtain and maintain a shipping receipt from the fuel supplier for each shipment of residual oil delivered certifying that the shipment contains less than 0.5 weight percent sulfur. The shipping receipt must indicate the location of the oil when a sample was drawn for analysis and must include the results of that analysis. Owners or operators of affected facilities combusting coal and seeking to demonstrate compliance by fuel supplier certification must obtain and maintain a shipping receipt from the fuel supplier for each shipment of coal delivered certifying that the shipment contains a combination of sulfur and heat which would limit the SO_2 emissions from the shipment to 520 ng/J (1.2 lb/million Btu) or less. The shipping receipt must indicate the location of the coal when a sample was collected for analysis and must include the results of that analysis.

Owners or operators seeking to demonstrate compliance by fuel supplier certification must submit quarterly reports including copies of all shipping receipts obtained during the previous quarter and including a certified statement signed by the owner or operator of the affected facility that the shipping receipts submitted represent all of the fuel combusted in that quarter. Records must be maintained for 2 years.

The PM standards require owners or operators to submit quarterly excess emission reports for coal-, residual oil-, and wood-fired units. If no excess emissions occur in a particular quarter, then a semiannual report is required stating that no excess emissions occurred during the reporting period.

II. Summary of Changes to the Proposed Standards

The changes that have been made since proposal of the standards are presented below. The rationales for these changes are presented under section V of this notice. In addition to the changes listed below, the regulation has been reorganized since proposal to clarify its meaning and to remove redundant paragraphs.

The proposed NO_x limit of 430 ng/J (1.0 lb/million Btu) heat input has been eliminated; no NO_x standards are being promulgated.

For wood-fired steam generating units with heat input capacities greater than 8.7 MW (30 million Btu/hr) operating at annual capacity factors of 30 percent or less, the PM standards have been changed from 43 ng/J (0.10 lb/million Btu) heat input to 130 ng/J (0.30 lb/million Btu) heat input.

Distillate oil-fired units have been exempted from the requirement for continuous monitoring of opacity. In addition, the requirement for oil-fired units operating at 10 percent annual capacity factor or less to perform a 24-hour demonstration of operating capacity has been eliminated.

To comply with the SO_2 emission limit, all distillate oil-fired units with heat input capacities between 2.9 and 29 MW (10 and 100 million Btu/hr) and coal- and residual oil-fired units with heat input capacities of 2.9 to 8.7 MW (10 to 30 million Btu/hr) may use supplier certification of fuel sulfur content in lieu of fuel sampling and analysis.

III. Impacts of the Standards

A. Air

In the fifth year after adoption of this NSPS, nationwide emissions of SO_2 from small steam generating units would be decreased by about 33,000 megagrams per year (Mg/yr) [37,000 tons per year (tons/year)], compared with projected emission levels under the regulatory baseline. This represents a reduction of about 70 to 80 percent, depending on the steam generating unit size and type of fuel fired. The nationwide emissions of PM would be decreased by about 3,000 Mg/yr (3,400 tons/year) compared with the baseline, an 80- to 90-percent reduction. The regulatory baseline is the emission level projected to result from new small steam generating units built between 1989 and 1993, controlled to the levels currently mandated under typical State implementation plans (SIP's) in the absence of the final standards.

The changes to the proposed standards are not expected to significantly impact air emissions for the following reasons. The proposed standards for NO_x had no environmental benefit; therefore, the decision to delete the NO_x standards from the final regulation will result in no environmental impact. The PM emissions projected for small wood-fired steam generating units in the proposal notice were based on units operating at a 55-percent annual capacity factor. Since the less stringent emission limit of 130 ng/J (0.30 lb/million Btu) will only apply to wood-fired units operating at annual capacity factors of 30 percent or less, PM emissions are not expected to exceed the level projected in the proposal notice. The elimination of the opacity monitoring requirement for distillate oil-fired units is not expected to result in increased PM emissions because distillate oil is a relatively clean fuel that is unlikely to have opacity problems.

B. Water and Solid Waste

Under the final standards, no significant water pollution impacts are projected, and the projected impacts on solid waste generation are small. In addition, the wastes produced by PM control processes are nonhazardous and can be disposed of using traditional treatment and disposal techniques. Therefore, no adverse water pollution or solid waste impacts are anticipated as a result of the standards.

C. Energy

The final standards will not result in significant impacts on national fuel use markets. Some fuel switching from coal and residual oil to natural gas or distillate oil may occur, but the impacts of any fuel switching on coal, oil, and natural gas markets would be negligible on a national basis. Energy consumption impacts resulting from the standards would be small.

D. Control Costs

Typical steam generating unit costs. Under the final standards, the capital cost of a small coal-fired steam generating unit would increase by about 11 percent over the costs at the regulatory baseline. The magnitude of the increase would depend on steam generating unit size and type. Annualized costs for a small coal-fired steam generating unit would increase by approximately 6 percent over the costs at the regulatory baseline, depending on unit size and coal type. For a small oil-fired steam generating unit, the capital cost would increase by about 3 percent and annualized costs would increase by about 19 percent over the costs at the regulatory baseline, depending on unit size and oil type. For a small wood-fired steam generating unit operating at an annual capacity factor of 55 percent, the capital cost would increase by about 19 percent and annualized costs would increase by about 10 percent over the costs at the regulatory baseline, depending on unit size and type. Capital and annual costs for small wood-fired steam generating units operating at annual capacity factors less than 30 percent would be increased by less than 10 percent.

Nationwide costs. In the fifth year of applicability of these standards, the nationwide annualized costs for small steam generating units would increase by about $38 million.

E. Economic Effects

The economic effects of the final standards are considered negligible. For most of the six major industry groups analyzed, product prices under the "worst case" would increase by less than 1 percent. For the most steam intensive industries, product prices under the "worst case" are projected to increase by 2.8 percent. National product priced impacts would be significantly less. Most commercial-institutional facilities would not be affected by the final standards because of the size of the steam generating unit and fuels fired at these facilities. Of the commercial-institutional facilities with steam generating units subject to the SO_2 and PM standards, costs of services would generally increase by less than 0.5 percent. For the most steam intensive commercial facility, costs of services are projected to increase by 1.3 percent. Rental rates for office buildings that are affected by the final standards would increase by less than 1 percent.

IV. Public Participation

Prior to proposal of the standards, interested parties were advised by

public notice in the Federal Register (53 FR 9977, March 23, 1988) of a meeting of the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) to discuss the standards recommended for proposal. This meeting was held on May 19, 1988. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal.

The standards were proposed and published in the Federal Register on June 9, 1989 (54 FR 24792). The preamble to the proposed standards discussed the availability of eight background documents, which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal, and copies of the background documents were distributed to interested parties.

To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was held on August 8, 1989, at Research Triangle Park, North Carolina. The hearing was open to the public and each attendee was given an opportunity to comment on the proposed standards. A total of five people testified at the public hearing.

The public comment period extended from June 9, 1989, to September 8, 1989. Forty-eight comment letters were received addressing issues relative to the proposed standards. The comments have been placed in Docket No. A–86–02, carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the proposed standards.

V. Significant Comment on the Proposed Standards

Comments on the proposed standards were received from industry, trade associations, Federal agencies, State agencies, and the general public. Those comments which led to a change in the regulation are discussed below. A complete presentation of the comments and the EPA's response to each of them is found in the promulgation BID which is referred to in the ADDRESSES Section of this preamble.

A. Standards for Particulate Matter

Some commenters objected to the PM limit of 43 ng/J (0.10 lb/million Btu) heat input for wood-fired steam generating units with greater than 8.7 MW (30 million Btu/hr) heat input capacity. They felt that the emission limit is too low. They recommended replacing the PM limit of 43 ng/J (0.10 lb/million Btu) heat input with a limit of 86 ng/J (0.20 lb/million Btu) heat input based on good combustion and high efficiency cyclones or a limit of 130 ng/J (0.30 lb/million Btu) heat input based on use of double mechanical collectors (DMC's).

One commenter stated that the PM limit appears to have been based on the fact that control technology to achieve the limit is available to larger steam generating units, and that the performance and costs of these controls for small units have not been fully addressed. This commenter also questioned the EPA's assumption that 55 percent is a representative capacity factor for wood-fired units. This commenter asserted that some units would be operated at lower capacity factors and that the cost effectiveness of PM controls for these units would be significantly different than for high capacity factor units.

Wet scrubbers have been used widely for control of emissions from small wood-fired steam generating units. The available data on the effectiveness of wet scrubbers in reducing PM emissions indicate that the proposed standard of 43 ng/J (0.10 lb/million Btu) is achievable for wood-fired steam generating units with heat input capacities between 8.7 and 29 MW (30 and 100 million Btu/hr). The background document on the technical basis for the PM standards also presents data showing that wood-fired units equipped with an electrostatic precipitator (ESP) or electrostatic gravel bed filter (EGF) can achieve PM emission levels of 43 ng/J (0.10 lb/million Btu) heat input or less. Therefore, these control technologies are also considered to be demonstrated for reducing PM emissions from wood-fired steam generating units to 43 ng/J (0.10 lb/million Btu) heat input or less.

The PM control data analyzed for wood-fired steam generating units include measurements of PM emissions from units with heat input capacities ranging from 50 to 181 MW (170 to 615 million Btu/hr) equipped with ESP's, and from 16 to 67 MW (55 to 230 million Btu/hr) equipped with wet scrubbers. Although all of the units equipped with ESP's and many of the units equipped with wet scrubbers from which these data are drawn are larger than those included in this source category, the characteristics of the emissions from these larger units are similar to those of smaller units in terms of the concentration of particles in the gas stream, the size distribution and resistivity of those particles, and their chemical composition. The primary difference in emissions between the larger and smaller steam generating units is the volume of the gas stream to be treated. The gas volume affects the size and capacity of the control device, rather than the effectiveness of the control technology in reducing the level of PM emitted. Consequently, these technologies are considered appropriate for units in the size range from 8.7 to 29 MW (30 to 100 million Btu/hr) heat input capacity. There are no available data suggesting that these technologies are not transferable to units in this size range.

The cost analysis performed for the various control options includes estimates of capital, operation and maintenance, and annualized costs. Although the cost-effectiveness values for achieving the standards are relatively high, the standards result in greater overall PM emission reductions and much greater reductions in PM_{10} emissions than the other alternatives that were considered. Consequently, the impacts of compliance for small units were found to be reasonable for units with annual capacity factors above 30 percent.

A capacity factor of 55 percent has been determined to be typical of wood-fired steam generating units based on an analysis of the data presented in the background document "Projected Impacts of Alternative Particulate Matter New Source Performance Standards for Industrial-Commercial-Institutional Nonfossil Fuel-Fired Steam Generating Units." As shown in that document, virtually all new wood-fired steam generating units in the affected size range will be high capacity factor units due to economic considerations. Other fuels would be more economical below this capacity factor. Impacts of the 43 ng/J (0.10 lb/million Btu) standard were carefully analyzed for units operating at a capacity factor of 55 percent and were determined to be reasonable for units greater than 8.7 MW (30 million Btu/hr) in size.

It is acknowledged, however, that some lower capacity units may be constructed for reasons other than cost. Consequently, the impacts of the PM standards on units operating at low capacities (i.e., annual capacity factors below 30 percent) were also carefully analyzed. Compared to small wood-fired units with higher capacity factors, the cost effectiveness of the proposed PM standards for low capacity factor wood-fired units below 29 MW (100 million Btu/hr) heat input in size can be relatively high. For example, the estimated cost effectiveness for small wood-fired units between 29 and 8.7 MW (100 and 30 million Btu/hr) heat input capacity operating at a capacity factor of 26 percent ranges from about

$11,000 to $18,000/Mg ($10,000 to $16,000/ton), respectively, depending on unit size. These costs are considered unreasonable and therefore do not reflect best demonstrated technology for low capacity factor units. Rather, a PM standard of 130 ng/ (0.03 lb/million Btu) heat input is being included in the final regulation for wood-fired units operating at capacity factors below 30 percent. This limit is based on the use of DMC's. Such a standard results in significant reductions in capital and operating costs and cost effectiveness.

Two commenters stated that the EPA's cost-effectiveness estimate for achieving the PM emission limit is considerably higher, on a dollars per ton basis, than has been considered reasonable for previous NSPS rulemakings for other source categories. One commenter noted that EPA has estimated incremental cost-effectiveness values for small coal-fired units that are much lower than those for small wood-fired units. Both commenters stated that there is clearly an inequitable cost burden placed on new wood-fired steam generating units. Another commenter stated that the wide range of relatively high cost-effectiveness values indicates the need to further distinguish among sizes of wood-fired units, and to establish standards for subcategories based on size and capacity factor.

The estimated cost effectiveness of the PM standards for typical wood-fired units, based on use of wet scrubbers or ESP's capable of reducing PM emissions to 43 ng/J (0.10 lb/million Btu) heat input or less, ranges from about $6,000 to 9,200/Mg ($5,400 to $8,300/ton), depending on the size of the steam generating unit. These values represent the cost effectiveness for small wood-fired units with an annual capacity factor of 55 percent, which is typical for most industrial size wood-fired units. These values are generally consistent with the cost-effectiveness range estimated for small coal-fired units. Although it is not necessary to equalize cost-effectiveness values across all classes of sources within the source category, the cost effectiveness of the PM standards for the bulk of the population of new wood-fired units is entirely consistent with the cost effectiveness of the PM standards for small coal-fired units. Also, as discussed above, the impacts of the PM standards on wood-fired units operated at lower annual capacity factors (i.e., below 30 percent) were examined and the standards for these units have been raised to 130 ng/J (0.30 lb/million Btu) heat input to reduce the cost burden. Consequently, the PM standards do not pose an inequitable burden on new wood-fired units as compared to new coal-fired units.

The steam generating unit size categories used in establishing the PM standards reflect differences in the end use, design, fuel-use, and emissions characteristics of small steam generating units. The data presented in the background documents indicate that small steam generating units fall into the three size categories of 0 to 2.9 MW, 2.9 to 8.7 MW, and 8.7 to 29 MW (0 to 10 million Btu/hr, 10 to 30 million Btu/hr, and 30 to 100 million Btu/hr) heat input capacity. The largest size units (8.7 to 29 MW [30 to 100 million Btu/hr] heat input capacity) generally serve industrial facilities such as manufacturers. These units are primarily watertube units. Units in the middle category (2.9 to 8.7 MW (10 to 30 million Btu/hr) heat input capacity) serve large commercial and institutional facilities where both watertube and firetube units are used. The smallest units are generally found in small commercial or institutional facilities (such as churches and public schools) where firetube and cast-iron units predominate. Available data on small steam generating units indicate that these size categories are the most appropriate for setting PM standards because emission reduction potential varies according to these size categories and because there are differences in the typical uses of the units and the availability of operating personnel among these size categories.

The impacts of PM control on each of these three size categories of small steam generating units were carefully examined. It was determined that PM controls were both effective and did not impose unreasonable costs or other impacts for units larger than 8.7 MW (30 million Btu/hr) heat capacity. For the two smaller size categories, however, the costs of control are not considered reasonable and trained operators capable of operating the PM control systems are not typically available. Therefore, no PM standards have been established for units smaller than 8.7 MW (30 million Btu/hr) heat input capacity.

B. Standards for Nitrogen Oxides

Several commenters objected to the proposal of standards for NO_x emissions from small industrial-commercial-institutional steam generating units. These commenters stated EPA had misinterpreted the U.S. District Court's ruling in *Sierra Club* v. *Reilly*, (D.D.C., No. 84–0325) in deciding to set NO_x standards even though the EPA had determined that the impacts of the standards would be unreasonable. The commenters stated that the language in the Court order in *Sierra Club* v. *Reilly* does not require EPA to adopt a standard that is determined to be unreasonable, but recognizes the EPA's discretion to determine if such a standard is necessary and reasonable. Further, these commenters stated that the EPA's on analysis showed that the proposed standards for NO_x emissions would result in unreasonable costs for compliance and administration, particularly for owners and operators of small steam generating units. Two commenters stated that EPA has the discretion to determine if a NO_x standard is necessary, and that if EPA determines that promulgating such a standard is neither reasonable nor practical, that this determination would be given deference by the Court.

Pursuant to the order of the Court in *Sierra Club* v. *Reilly*, control technologies for reducing NO_x emissions from small steam generating units were examined thoroughly in developing the proposed regulations. The primary NO_x control technologies (low excess air (LEA), flue gas recirculation [FGR], staged combustion, thermal deNO_x, selective catalytic reduction [SCR] were examined, and the best information on the effectiveness, availability, and cost of these technologies evaluated. Of these technologies, thermal deNO_x was found to be inapplicable to small steam generating units for technical reasons. Selective catalytic reduction is an expensive technology that is considered unreasonably costly for small steam generating units. Although the data on the performance of the remaining three technologies in reducing emissions of NO_x from small steam generating units are limited, the cost effectiveness of these remaining three technologies was calculated for representative units and conservatively estimated to range from $3,300 to $33,000/Mg ($3,000 to $30,000/ton). These costs are considered to be unreasonably high for national NO_x standards for this source category.

In proposing a NO_x standard for small steam generating units, EPA pointed out that the language of the Court's order in *Sierra Club* v. *Reilly* could be interpreted to require EPA to propose such a standard. To avoid any potential conflict with the Court's order, EPA proposed and requested comments on a NO_x standard. The proposed NO_x standard would impose no costs although it would also achieve no emission reductions. No additional information has been presented in response to the EPA's request for comments that would alter the original conclusion that the cost of NO_x control

for this source category is unreasonably high and that the proposed NO_x standard would result in no reduction in NO_x emissions or produce any other environmental benefits. Therefore, the proposed NO_x standard is being withdrawn and small steam generating units will not be subject to an emission limit for NO_x under this regulation.

C. Test Methods and Monitoring

Six commenters stated that applying CEMS for opacity monitoring at small oil-fired steam generating units is unjustified. These commenters stressed that oil-fired steam generating units normally have low opacity and would exceed the 20 percent opacity standard only under poor operation and maintenance conditions. Because poor operation and maintenance practices that result in high opacity would also result in higher costs to the steam generating unit owner or operator by increasing fuel costs, the commenters asserted that instances of high opacity would be infrequent. One commenter said opacity monitoring for oil-fired steam generating units would result in capital costs of $110,000 and annual operation and maintenance costs of $50,000, without reducing emissions at all.

The intent of the proposed opacity limit was to identify units operating with incomplete combustion and to allow appropriate remedial and enforcement actions to be taken to improve the operation of those units. Because distillate oil is a very clean burning fuel with a relatively low ash content, steam generating units firing distillate oil typically require very little maintenance to ensure proper combustion. Because violations of the opacity standards are not expected to occur at distillate oil-fired units, these units are being exempted from the opacity monitoring requirements of the final standards. Although the monitoring requirement for opacity is being withdrawn, the opacity limit itself is being retained for these units because it will allow operators and enforcement personnel to intervene in those instances where improper operation and maintenance of a distillate oil-fired unit results in unexpectedly high opacity.

The combustion of residual oil, on the other hand, is more likely to result in opacity problems, because residual oil has a higher ash content. Further, incomplete combustion of residual oil results in formation of an unburned carbonaceous component that can account for 90 percent of the measured opacity from a poorly operated residual oil-fired steam generating unit. Consequently, residual oil-fired units require much more maintenance than distillate oil-fired units to achieve low opacity on a continous basis. Because residual oil has a higher ignition temperature and lower viscosity than distillate oil, it is much more difficult to achieve and maintain proper combustion in a residual oil-fired unit. Therefore, because residual oil-fired steam generating units are much more likely to lead to opacity exceedences if not carefully maintained, residual oil-fired units are not being exempted from the opacity monitoring requirements of the standards. The opacity monitor will identify units operating with incomplete combustion and indicate to the source owner or operator the need for some maintenance activity.

Several commenters objected that the requirement for daily fuel sampling and analysis would impose an unreasonable cost burden on the owners and operators of small steam generating units, without accomplishing any significant improvement in air quality. These commenters also pointed out that Reference Method 19 is overly complicated and costly. They said that small steam generating units often do not have full-time, trained operators who can take samples as frequently or as accurately as required. One commenter pointed out that EPA had recognized this limitation in eliminating the PM standards for units smaller than 8.7 MW (30 million Btu/hr) and that the same consideration should apply to daily coal sampling.

In lieu of sampling, these commenters suggested substituting fuel supplier certification of coal and/or oil composition for actual sampling and analysis by the small steam generating unit owner or operator. The commenters said that coal or oil purchased at a specific sulfur content will meet the defined SO_2 emission limit, and that duplicate testing and paperwork by the fuel purchaser would be unnecessary and create extra expense without environmental improvement.

In the case of distillate oil, the fuel supplier's certification that a shipment of oil complies with ASTM specifications is sufficient to demonstrate compliance with the SO_2 standards. The ASTM specifications require a relatively uniform fuel with a sulfur content of 0.5 weight percent or less. Any unit firing oil meeting the ASTM specifications for distillate oil is capable of achieving compliance with the SO_2 emission limit. Consequently, a supplier's certification that the oil is distillate oil will be considered sufficient to verify compliance with the standards for all distillate oil-fired units in this source category.

For residual oil, on the other hand, the ASTM specifications allow a wider variety of sulfur contents, only some of which are capable of meeting the SO_2 emission limit. In addition, fuel supplier certifications are rarely the result of sampling and analysis of as-delivered fuels, but are generally the result of sampling and analysis of very large quantities of stored oil at the refinery. It is difficult to confirm that the results of sampling and fuel analysis at the refinery are representative of the fuel shipment received at the steam generating unit. Consequently, supplier certifications are significantly less reliable as an indicator of actual sulfur content for residual oil than for distillate oil. Therefore, sampling and analysis of fuel shipments will continue to be required for most residual oil-fired units, excepts as discussed below.

Fuel sampling and analysis for residual oil is a relatively simple procedure when conducted by a trained steam generating unit operator. Because residual oil-fired steam generating units larger than 8.7 MW (30 million Btu/hr) heat input capacity are typically located at industrial facilities, they generally have full-time, trained operators on site who are capable of collecting and preparing samples for analysis. Oil-fired steam generating units smaller than 8.7 MW (30 million Btu/hr) heat input capacity, on the other hand, are typically located at institutional or commercial facilities (*e.g.*, hospital and shopping centers) and frequently are not supported by full-time operators. For this reason, sampling and analysis would be a greater burden on the owners or operators of steam generating units in this size range. Therefore, although somewhat less reliable, certifications of residual oil sulfur content from fuel suppliers may be used to demonstrate compliance for residual oil-fired steam generating units smaller than 8.7 MW (30 million Btu/hr) heat input capacity.

The circumstances for coal-fired steam generating units are similar to those for residual oil-fired units. The coal sampling and analysis procedure in Method 19 requires the attention of a full-time, trained operator to collect samples with the required frequency and to prepare the sample for analysis. Industrial facilities that use coal-fired steam generating units generally have trained operators on-site to perform this function, whereas commercial and institutional facilities typically do not. Because coal-fired steam generating units larger than 8.7 MW (30 million

Btu/hr) heat input capacity are typically located at industrial facilities, fuel sampling is an appropriate alternative to continuous emission monitoring for units in this size range. For smaller units, however, that are typically located at institutional and commercial facilities, coal sampling and analysis would pose a significant burden. Consequently, these standards allow operators of coal-fired steam generating units smaller than 8.7 MW (30 million Btu/hr) heat input capacity to rely on a coal supplier's certification of coal sulfur content in lieu of sampling.

D. Miscellaneous

One commenter objected to the requirement in § 60.44c(d) of the proposed standards that requires units firing very low sulfur oil with capacity factors less than 10 percent to perform a full-load, 24-hour performance test. The commenter pointed out that § 60.44c(j) of the proposed standards exempts higher capacity factor units firing distillate oil or residual oil having a sulfur content of 0.5 weight percent or less from the performance testing requirements, while § 60.44c(d) of the proposed standards required performance testing for very low sulfur oil-fired units with lower capacity utilization.

The performance testing requirements of § 60.44c(d) of the proposed standards were intended to be less burdensome for low capacity units firing very low sulfur oil than the 30-day initial SO_2 performance test required of most affected facilities. However, the commenter is correct that § 60.44c(j) of the proposed standards provided oil-fired steam generating units firing either distillate oil or residual oil with 0.5 weight percent sulfur or less with an alternative to the 30-day performance test. Under § 60.44c(j) of the proposed standards, an owner or operator who fires very low sulfur oil and who maintains fuel records does not have to conduct performance testing. Because this exclusion from performance testing overlaps with the 24-hour performance test requirement of § 60.44c(d) of the proposed standards, the requirement for a 24-hour initial performance test for low capacity units firing very low sulfur oil and using supplier certification to demonstrate compliance has been deleted from the final standards. In lieu of an initial performance test, owners or operators of distillate oil-fired units are allowed to maintain records of fuel supplier certifications that the oil combusted meets ASTM specifications for distillate oil. Similarly, supplier certification of fuel sulfur content is allowed as an alternative to an initial performance test for residual oil-fired units between 2.9 and 8.7 MW (10 and 30 million Btu/hr) heat input capacity. For residual oil-fired units between 8.7 and 29 MW (30 and 100 million Btu/hr) heat input capacity, the initial performance test consists of sampling and analysis of the initial tank of fuel oil to demonstrate compliance with the standard. Thereafter, the owner or operator must sample and analyze the sulfur content of each new shipment of fuel oil and calculate compliance with the standard on a 30-day rolling average basis.

One commenter stated that alternative methods of fuel analysis should be allowed for oil-fired steam generating units with only one fuel tank. The commenter pointed out that the wording of the current standards would require a unit with only one fuel tank to be shut down while filling and analyzing the oil in the fuel tank. The commenter suggested that the regulation either allow the owner or operator of an oil-fired steam generating unit to sample the tank immediately after filling, or sample and analyze the incoming shipment prior to unloading.

Section 60.46c(b)(2) of the proposed standards required oil samples to be taken "from the fuel tank after each new shipment of oil is received and before any amount of oil is combusted." This requirement would accommodate the commenter's suggestion that the tank be sampled immediately after refilling. As use of this new fuel begins, the owner or operator can send the samples to be analyzed and begin firing the oil. If the analysis subsequently shows that the sulfur content of the fuel is too high to comply with the standards, then the owner or operator must ensure that the sulfur content of the next fuel shipment is low enough to meet the standards using a 30-day rolling average. The final language in § 60.44c has been clarified to reflect this procedure.

One commenter stated that § 60.46c(b) of the proposed regulation appears to require oil-fired steam generating units to sample and analyze oil sulfur content using both Method 19 and fuel shipment testing. The commenter suggested that the requirement should be either Method 19 *or* shipment testing. The same commenter also suggested that the applicability of § 60.46c(b)(2) of the proposed regulation to units using 24-hour averaging should be clarified.

The testing provisions of § 60.46c(b)(1) and (2) of the proposed regulation were intended to be alternative testing methods for residual oil-fired steam generating units. The languate of the regulation has been amended to clarify that these alternatives for residual oil-fired units.

The provisions of § 60.46c(b)(2) in the proposed standards which discussed fuel tank sampling did not specifically state the applicability of these procedures to low capacity units firing very low sulfur oil that use 24-hour averaging. The language of the regulation has been clarified to state that units firing distillate oil only need to maintain fuel supplier certifications that distillate oil is being fired in the unit. Similarly, steam generating units with a heat input capacity between 2.9 MW and 8.7 MW (10 and 30 million Btu/hr) that fire residual oil with a sulfur content of 0.5 weight percent or less only need maintain fuel supplier certifications that residual oil with a sulfur content of 0.5 weight percent or less is being fired in the unit.

One commenter stated that § 60.46c(e)(3) of the proposed regulation specifies that the setting of the span value of the outlet SO_2 CEMS at 50 percent of the maximum estimated hourly potential SO_2 emissions of the fuel combusted. The commenter pointed out that this setting could result in the inability to determine exceedances of the SO_2 emissions limit when a relatively low sulfur fuel is used. The commenter recommended that the span value of the outlet SO_2 CEMS should be at least 125 percent of the applicable emission standards.

The span values listed in § 60.46c(e)(3) of the proposed regulation were relevant only to those instances where a percent reduction in SO_2 emissions is required in addition to compliance with an emission limit. Section 60.46c of the final regulation has been amended to require a span value of 125 percent where only an emission limit (no percent reduction) is required.

VI. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments in the **Federal Register** Notices and background documents, the contents of the docket, except for interagency review materials, will serve as the

record in case of judicial review (Section 307(d)(7)(A)).

B. Clean Air Act Procedural Requirements

The effective date of this regulation is September 12, 1990. Section 111 of the CAA provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities of which the construction or modification was commenced after the date of proposal, June 9, 1989.

As prescribed by section III, the promulgation of these standards was preceded by the Administrator's determination that small industrial-commercial-institutional steam generating units contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. In accordance with section 117 of the CAA, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed not later than 4 years from the date of promulgation as required by the CAA. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

Section 317 of CAA requires the Administrator to prepare an economic impact assessment for any NSPS promulgated under section 111(b) of the CAA. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to ensure that cost was carefully considered in determining the best demonstrated technology. The economic impact assessment is included in the background documents for the proposed standards.

C. Office of Management and Budget Reviews

Information collection requirements associated with this regulation (those included in 40 CFR part 60, subpart A and subpart Dc) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number (2060.0202).

During the first 3 years that the standards are in effect, the public reporting burden for collection of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information is estimated to be 72 person-years, based on an average of 708 respondents per year.

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). The EPA has determined that this regulation would result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule." (1) Nationwide annual compliance costs are not as great as the threshold of $100 million; (2) the regulations do not significantly increase prices or production costs; and (3) the regulations do not cause significant, adverse effects on domestic competition, employment, investment, productivity, innovation, or competition in foreign markets.

This regulation was submitted to the OMB for review as required by Executive Order 12291. Any written comments from OMB and any responses to those comments will be included in Docket A–86–02. This docket is available for public inspection at the EPA's Air Docket, which is listed under the ADDRESSES section of this notice.

D. Regulatory Flexibility Act Compliance

The Regulatory Flexibility Act requires consideration of the impacts of regulation on small entities, including small businesses, organizations, and jurisdictions. A small business is defined as any business concern that is independently owned and operated and not dominant in its field as defined by the Small Business Act (SBA). Similarly, a small organization is defined by the SBA as a not-for-profit enterprise, independently owned and operated, and not dominant in its field. A small jurisdiction is defined as any government district with a population of fewer than 50,000 people.

The final standards would apply to small steam generating units in small busineses (defined as having 500 to 1,500 employees depending on the SIC classification) as well as large businesses. The standards however, would not affect a substantial number of small businesses. Most small businesses will not be affected by the standards because sales of new steam generating units are expected to remain at their current low levels. New small steam generating units, therefore, are expected to be a relatively small percentage of the existing population of small steam generating units over the next five years. In addition, small steam generating units in the commercial segment are used primarily for space heating and hot water. A relatively small percentage of commercial buildings will be impacted because (1) steam is not the predominant choice for heating new buildings, (2) most steam generating units used in commercial applications will be smaller than 2.9 MW (10 million Btu/hr) heat input, and (3) the predominant fuels used in commercial applications are natural gas and distillate oil, which will incur little or no compliance costs.

An economic impact on small businesses is considered significantly adverse if one of the following four criteria is met:

- Annual costs of compliance with the standards increase process or product costs by more than 5 percent.
- Compliance costs as a percent of sales are at least 10 percentage points higher for small businesses than for large businesses.
- Capital costs of compliance represent a significant portion of capital available to small businesses.
- The standards are likely to result in closure of small businesses.

The final standards would increase production costs by less than 5 percent, assuming full cost pass through, for "worst case" facilities in the most steam intensive industries. Impacts on product prices at the national level are expected to be insignificant. In the commercial segment, rental rates for office buildings that are affected by the standards would increase by less than 1 percent.

Compliance costs as a percent of sales or annual revenues were analyzed for small and large businesses. This measure of the regulatory burden of the standards would not be significantly higher for small businesses.

The final standards would impose additional capital expenditures for fabric filters on new small coal-fired steam generating units. These additional capital costs, however, would increase the capital requirement for the purchase of a new small steam generating unit by less than 10 percent.

Finally, the additional costs associated with the final standards are not expected to result in any business closures. Consequently, the standards will not result in significant adverse economic impacts on small businesses.

Pursuant to the Provisions of 5 U.S.C. 605(b), I hereby certify that these rules, if promulgated, will not have a significant economic impact on a substantial number of small business entities because the number of small

entities that would be affected, if any, is not substantial.

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping, Fossil fuel-fired steam generating units, Nonfossil fuel-fired steam generating units.

Dated: August 31, 1990.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth below.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7411, 7414, and 7601(a).

2. Section 60.17 is amended by revising paragraphs (a)(1), (a)(10), and (a)(50) to read as follows:

§ 60.17 Incorporation by reference.

* * * * *

(a) * * *

(1) ASTM D388–77, Standard Specification for Classification of Coals by Rank, incorporation by reference (IBR) approved for §§ 60.41(f); 60.45(f)(4)(i), (ii), (vi); 60.41a; 60.41b; 60.41c; 60.25(b), (c).

* * * * *

(10) ASTM D396–78, Standard Specification for Fuel Oils, IBR approved for §§ 60.40b; 60.41b; 60.41c; 60.111(b); 60.111a(b).

* * * * *

(50) ASTM D1835–86, Standard Specification for Liquefied Petroleum (LP) Gases, IBR approved for §§ 60.41b; 60.41c.

3. Part 60 is amended by adding subpart Dc to read as follows:

Subpart Dc—Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units

Sec.

Subpart Dc—Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units

§ 60.40c Applicability and delegation of authority.

(a) The affected facility to which this subpart applies is each steam generating unit for which construction, modification, or reconstruction is commenced after June 9, 1989 and that has a maximum design heat input capacity of 29 megawatts (MW) (100 million Btu per hour (Btu/hr)) or less, but greater than or equal to 2.9 MW (10 million Btu/hr).

(b) In delegating implementation and enforcement authority to a State under section 111(c) of the Clean Air Act, § 60.48c(a)(4) shall be retained by the Administrator and not transferred to a State.

§ 60.41c Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Clean Air Act and in subpart A of this part.

Annual capacity factor means the ratio between the actual heat input to a steam generating unit from an individual fuel or combination of fuels during a period of 12 consecutive calendar months and the potential heat input to the steam generating unit from all fuels had the steam generating unit been operated for 8,760 hours during that 12-month period at the maximum design heat input capacity. In the case of steam generating units that are rented or leased, the actual heat input shall be determined based on the combined heat input from all operations of the affected facility during a period of 12 consecutive calendar months.

Coal means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials in ASTM D388–77, "Standard Specification for Classification of Coals by Rank" (incorporated by reference—see § 60.17); coal refuse; and petroleum coke. Synthetic fuels derived from coal for the purpose of creating useful heat, including but not limited to solvent-refined coal, gasified coal, coal-oil mixtures, and coal-water mixtures, are included in this definition for the purposes of this subpart.

Coal refuse means any by-product of coal mining or coal cleaning operations with an ash content greater than 50 percent (by weight) and a heating value less than 13,900 kilojoules per kilogram (kJ/kg) (6,000 Btu per pound (Btu/lb) on a dry basis.

Cogeneration steam generating unit means a steam generating unit that simultaneously produces both electrical (or mechanical) and thermal energy from the same primary energy source.

Combined cycle system means a system in which a separate source (such as a stationary gas turbine, internal combustion engine, or kiln) provides exhaust gas to a steam generating unit.

Conventional technology means wet flue gas desulfurization technology, dry flue gas desulfurization technology, atmospheric fluidized bed combustion technology, and oil hydrodesulfurization technology.

Distillate oil means fuel oil that complies with the specifications for fuel oil numbers 1 or 2, as defined by the American Society for Testing and Materials in ASTM D396–78, "Standard Specification for Fuel Oils" (incorporated by reference—see § 60.17).

Dry flue gas desulfurization technology means a sulfur dioxide (SO_2) control system that is located between the steam generating unit and the exhaust vent or stack, and that removes sulfur oxides from the combustion gases of the steam generating unit by contacting the combustion gases with an alkaline slurry or solution and forming a dry powder material. This definition includes devices where the dry powder material is subsequently converted to another form. Alkaline reagents used in dry flue gas desulfurization systems include, but are not limited to, lime and sodium compounds.

Duct burner means a device that combusts fuel and that is placed in the exhaust duct from another source (such as a stationary gas turbine, internal combustion engine, kiln, etc.) to allow the firing of additional fuel to heat the exhaust gases before the exhaust gases enter a steam generating unit.

Emerging technology means any SO_2 control system that is not defined as a conventional technology under this section, and for which the owner or operator of the affected facility has received approval from the Administrator to operate as an emerging technology under § 60.48c(a)(4).

Federally enforceable means all limitations and conditions that are enforceable by the Administrator, including the requirements of 40 CFR Parts 60 and 61, requirements within any applicable State implementation plan, and any permit requirements established under 40 CFR 52.21 or under 40 CFR 51.18 and 40 CFR 51.24.

Fluidized bed combustion technology means a device wherein fuel is distributed onto a bed (or series of beds) of limestone aggregate (or other sorbent materials) for combustion; and these materials are forced upward in the device by the flow of combustion air and the gaseous products of combustion. Fluidized bed combustion technology includes, but is not limited to, bubbling bed units and circulating bed units.

Fuel pretreatment means a process that removes a portion of the sulfur in a fuel before combustion of the fuel in a steam generating unit.

Heat input means heat derived from combustion of fuel in a steam generating unit and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust gases from other sources (such as stationary gas turbines, internal combustion engines, and kilns).

Heat transfer medium means any material that is used to transfer heat from one point to another point.

Maximum design heat input capacity means the ability of a steam generating unit to combust a stated maximum amount of fuel (or combination of fuels) on a steady state basis as determined by the physical design and characteristics of the steam generating unit.

Natural gas means (1) a naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane, or (2) liquefied petroleum (LP) gas, as defined by the American Society for Testing and Materials in ASTM D1835–86, "Standard Specification for Liquefied Petroleum Gases" (incorporated by reference—see § 60.17).

Noncontinental area means the State of Hawaii, the Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, or the Northern Mariana Islands.

Oil means crude oil or petroleum, or a liquid fuel derived from crude oil or petroleum, including distillate oil and residual oil.

Potential sulfur dioxide emission rate means the theoretical SO_2 emissions (nanograms per joule [ng/J], or pounds per million Btu [lb/million Btu] heat input) that would result from combusting fuel in an uncleaned state and without using emission control systems.

Process heater means a device that is primarily used to heat a material to initiate or promote a chemical reaction in which the material participates as a reactant or catalyst.

Residual oil means crude oil, fuel oil that does not comply with the specifications under the definition of distillate oil, and all fuel oil numbers 4, 5, and 6, as defined by the American Society for Testing and Materials in ASTM D396–78, "Standard Specification for Fuel Oils" (incorporated by reference—see § 60.17).

Steam generating unit means a device that combusts any fuel and produces steam or heats water or any other heat transfer medium. This term includes any duct burner that combusts fuel and is part of a combined cycle system. This term does not include process heaters as defined in this subpart.

Steam generating unit operating day means a 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time in the steam generating unit. It is not necessary for fuel to be combusted continuously for the entire 24-hour period.

Wet flue gas desulfurization technology means an SO_2 control system that is located between the steam generating unit and the exhaust vent or stack, and that removes sulfur oxides from the combustion gases of the steam generating unit by contacting the combustion gases with an alkaline slurry or solution and forming a liquid material. This definition includes devices where the liquid material is subsequently converted to another form. Alkaline reagents used in wet flue gas desulfurization systems include, but are not limited to, lime, limestone, and sodium compounds.

Wet scrubber system means any emission control device that mixes an aqueous stream or slurry with the exhaust gases from a steam generating unit to control emissions of particulate matter (PM) or SO_2.

Wood means wood, wood residue, bark, or any derivative fuel or residue thereof, in any form, including but not limited to sawdust, sanderdust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

§ 60.42c Standard for sulfur dioxide.

(a) Except as provided in paragraphs (b), (c), and (e) of this section, on and after the date on which the initial performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, the owner the operator of an affected facility that combusts only coal shall neither: (1) cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of 10 percent (0.10) of the potential SO_2 emission rate (90 percent reduction); nor (2) cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of 520 ng/J (1.2 lb/million Btu) heat input. If coal is combusted with other fuels, the affected facility is subject to the 90 percent SO_2 reduction requirement specified in this paragraph and the emission limit is determined pursuant to paragraph (e)(2) of this section.

(b) Except as provided in paragraphs (c) and (e) of this section, on and after the date on which the initial performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, the owner or operator of an affected facility that:

(1) Combusts coal refuse alone in a fluidized bed combustion steam generating unit shall neither:

(i) Cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of 20 percent (0.20) of the potential SO_2 emission rate (80 percent reduction); nor

(ii) Cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of 520 ng/J (1.2 lb/million Btu) heat input. If coal is fired with coal refuse, the affected facility is subject to paragraph (a) of this section. If oil or any other fuel (except coal) is fired with coal refuse, the affected facility is subject to the 90 percent SO_2 reduction requirement specified in paragraph (a) of this section and the emission limit determined pursuant to paragraph (e)(2) of this section.

(2) Combusts only coal and that uses an emerging technology for the control of SO_2 emissions shall neither:

(i) Cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of 50 percent (0.50) of the potential SO_2 emission rate (50 percent reduction); nor

(ii) Cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of 260 ng/J (0.60 lb/million Btu) heat input. If coal is combusted with other fuels, the affected facility is subject to the 50 percent SO_2 reduction requirement specified in this paragraph and the emission limit determined pursuant to paragraph (e)(2) of this section.

(c) On and after the date on which the initial performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that combusts coal, alone or in combination with any other fuel, and is listed in paragraphs (c)(1), (2), (3), or (4) of this section shall cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of the emission limit determined pursuant to paragraph

(e)(2) of this section. Percent reduction requirements are not applicable to affected facilities under this paragraph.

(1) Affected facilities that have a heat input capacity of 22 MW (75 million Btu/hr) or less.

(2) Affected facilities that have an annual capacity for coal of 55 percent (0.55) or less and are subject to a Federally enforceable requirement limiting operation of the affected facility to an annual capacity factor for coal of 55 percent (0.55) or less.

(3) Affected facilities located in a noncontinental area.

(4) Affected facilities that combust coal in a duct burner as part of a combined cycle system where 30 percent (0.30) or less of the heat entering the steam generating unit is from combustion of coal in the duct burner and 70 percent (0.70) or more of the heat entering the steam generating unit is from exhaust gases entering the duct burner.

(d) On and after the date on which the initial performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that combusts oil shall cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of 215 ng/J (0.50 lb/million Btu) heat input; or, as an alternative, no owner or operator of an affected facility that combusts oil shall combust oil in the affected facility that contains greater than 0.5 weight percent sulfur. The percent reduction requirements are not applicable to affected facilities under this paragraph.

(e) On and after the date on which the initial performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that combusts coal, oil, or coal and oil with any other fuel shall cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of the following:

(1) The percent of potential SO_2 emission rate required under paragraph (a) or (b)(2) of this section, as applicable, for any affected facility that

(i) Combusts coal in combination with any other fuel,

(ii) Has a heat input capacity greater than 22 MW (75 million Btu/hr), and

(iii) Has an annual capacity factor for coal greater than 55 percent (0.55); and

(2) The emission limit determined according to the following formula for any affected facility that combusts coal, oil, or coal and oil with any other fuel:

$$E_s = (K_aH_a + K_bH_b + K_cH_c)/H_a + H_b + H_c)$$

where:

E_s is the SO_2 emission limit, expressed in ng/J or lb/million Btu heat input,

K_a is 520 ng/J (1.2 lb/million Btu),

K_b is 260 ng/J (0.60 lb/million Btu),

K_c is 215 ng/J (0.50 lb/million Btu),

H_a is the heat input from the combustion of coal, except coal combusted in an affected facility subject to paragraph (b)(2) of this section, in Joules (J) [million Btu]

H_b is the heat input from the combustion of coal in an affected facility subject to paragraph (b)(2) of this section, in J (million Btu)

H_c is the heat input from the combustion of oil, in J (million Btu).

(f) Reduction in the potential SO_2 emission rate through fuel pretreatment is not credited toward the percent reduction requirement under paragraph (b)(2) of this section unless:

(1) Fuel pretreatment results in a 50 percent (0.50) or greater reduction in the potential SO_2 emission rate; and

(2) Emissions from the pretreated fuel (without either combustion or post-combustion SO_2 control) are equal to or less than the emission limits specified under paragraph (b)(2) of this section.

(g) Except as provided in paragraph (h) of this section, compliance with the percent reduction requirements, fuel oil sulfur limits, and emission limits of this section shall be determined on a 30-day rolling average basis.

(h) For affected facilities listed under paragraphs (h)(1), (2), or (3) of this section, compliance with the emission limits or fuel oil sulfur limits under this section may be determined based on a certification from the fuel supplier, as described under § 60.48c(f)(1), (2), or (3), as applicable.

(1) Distillate oil-fired affected facilities with heat input capacities between 2.9 and 29 MW (10 and 100 million Btu/hr).

(2) Residual oil-fired affected facilities with heat input capacities between 2.9 and 8.7 MW (10 and 30 million Btu/hr).

(3) Coal-fired facilities with heat input capacities between 2.9 and 8.7 MW (10 and 30 million Btu/hr).

(i) The SO_2 emission limits, fuel oil sulfur limits, and percent reduction requirements under this section apply at all times, including periods of startup, shutdown, and malfunction.

(j) Only the heat input supplied to the affected facility from the combustion of coal and oil is counted under this section. No credit is provided for the heat input to the affected facility from wood or other fuels or for heat derived from exhaust gases from other sources, such as stationary gas turbines, internal combustion engines, and kilns.

§ 60.43c Standard for particulate matter.

(a) On and after the date on which the initial performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that combusts coal or combusts mixtures of coal with other fuels and has a heat input capacity of 8.7 MW (30 million Btu/hr) or greater, shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of the following emission limits:

(1) 22 ng/J (0.05 lb/million Btu) heat input if the affected facility combusts only coal, or combusts coal with other fuels and has an annual capacity factor for the other fuels of 10 percent (0.10) or less.

(2) 43 ng/J (0.10 lb/million Btu) heat imput if the affected facility combusts coal with other fuels, has an annual capacity factor for the other fuels greater than 10 percent (0.10), and is subject to a federally enforceable requirement limiting operation of the affected facility to an annual capacity factor greater than 10 percent (0.10) for fuels other than coal.

(b) On and after the date on which the initial performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that combusts wood or combusts mixtures of wood with other fuels (except coal) and has a heat input capacity of 8.7 MW (30 million Btu/hr) or greater, shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of the following emissions limits:

(1) 43 ng/J (0.10 lb/million Btu) heat input if the affected facility has an annual capacity factor for wood greater than 30 percent (0.30); or

(2) 130 ng/J (0.30 lb/million Btu) heat input if the affected facility has an annual capacity factor for wood of 30 percent (0.30) or less and is subject to a federally enforceable requirement limiting operation of the affected facility to an annual capacity factor for wood of 30 percent (0.30) or less.

(c) On and after the date on which the initial performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that combusts coal, wood, or oil and has a heat input capacity of 8.7 MW (30 million Btu/hr) or greater shall cause to be discharged into the atmosphere from that affected facility any gases that exhibit greater than 20 percent opacity (6-minute average), except for one 6-

minute period per hour of not more than 27 percent opacity.

(d) The PM and opacity standards under this section apply at all times, except during periods of startup, shutdown, or malfunction.

§ 60.44c Compliance and performance test methods and procedures for sulfur dioxide.

(a) Except as provided in paragraphs (g) and (h) of this section and in § 60.8(b), performance tests required under § 60.8 shall be conducted following the procedures specified in paragraphs (b), (c), (d), (e), and (f) of this section, as applicable. Section 60.8(f) does not apply to this section. The 30-day notice required in § 60.8(d) applies only to the initial performance test unless otherwise specified by the Administrator.

(b) The initial performance test required under § 60.8 shall be conducted over 30 consecutive operating days of the steam generating unit. Compliance with the percent reduction requirements and SO_2 emission limits under § 60.42c shall be determined using a 30-day average. The first operating day included in the initial performance test shall be scheduled within 30 days after achieving the maximum production rate at which the affect facility will be operated, but not later than 180 days after the initial startup of the facility. The steam generating unit load during the 30-day period does not have to be the maximum design heat input capacity, but must be representative of future operating conditions.

(c) After the initial performance test required under paragraph (b) and § 60.8, compliance with the percent reduction requirements and SO_2 emission limits under § 60.42c is based on the average percent reduction and the average SO_2 emission rates for 30 consecutive steam generating unit operating days. A separate performance test is completed at the end of each steam generating unit operating day, and a new 30-day average percent reduction and SO_2 emission rate are calculated to show compliance with the standard.

(d) If only coal, only oil, or a mixture of coal and oil is combusted in an affected facility, the procedures in Method 19 are used to determine the hourly SO_2 emission rate (E_{ho}) and the 30-day average SO_2 emission rate (E_{ao}). The hourly averages used to compute the 30-day averages are obtained from the continuous emission monitoring system (CEMS). Method 19 shall be used to calculate E_{ao} when using daily fuel sampling or Method 6B.

(e) If coal, oil, or coal and oil are combusted with other fuels:

(1) An adjusted E_{ho} ($E_{ho}°$) is used in Equation 19-19 of Method 19 to compute the adjusted E_{ao} ($E_{ao}°$). The $E_{ho}°$ is computed using the following formula:

$$E_{ho}° = [E_{ho} - E_w(1 - X_k)]/X_k$$

where:

$E_{ho}°$ is the adjusted E_{ho}, ng/J (lb/million Btu)

E_{ho} is the hourly SO_2 emission rate, ng/J (lb/million Btu)

E_w is the SO_2 concentration in fuels other than coal and oil combusted in the affected facility, as determined by fuel sampling and analysis procedures in Method 9, ng/J (lb/million Btu). The value E_w for each fuel lot is used for each hourly average during the time that the lot is being combusted. The owner or operator does not have to measure E_w if the owner or operator elects to assume $E_w = 0$.

X_k is the fraction of the total heat input from fuel combustion derived from coal and oil, as determined by applicable procedures in Method 19.

(2) The owner or operator of an affected facility that qualifies under the provisions of § 60.42c(c) or (d) [where percent reduction is not required] does not have to measure the parameters E_w or X_k if the owner or operator of the affected facility elects to measure emission rates of the coal or oil using the fuel sampling and analysis procedures under Method 19.

(f) Affected facilities subject to the percent reduction requirements under § 60.42c(a) or (b) shall determine compliance with the SO_2 emission limits under § 60.42c pursuant to paragraphs (d) or (e) of this section, and shall determine compliance with the percent reduction requirements using the following procedures:

(1) If only coal is combusted, the percent of potential SO_2 emission rate is computed using the following formula:

$$\%P_s = 100(1 - \%R_g/100)(1 - \%R_f/100)$$

where

$\%P_s$ is the percent of potential SO_2 emission rate, in percent

$\%R_g$ is the SO_2 removal efficiency of the control device as determined by Method 19, in percent

$\%R_f$ is the SO_2 removal efficiency of fuel pretreatment as determined by Method 19, in percent

(2) If coal, oil, or coal and oil are combusted with other fuels, the same procedures required in paragraph (f)(1) of this section are used, except as provided for in the following:

(i) To compute the $\%P_s$, an adjusted $\%R_g$ ($\%R_g°$) is computed from $E_{ao}°$ from paragraph (e)(1) of this section and an adjusted average SO_2 inlet rate ($E_{ai}°$) using the following formula:

$$\%R_g° = 100\,[1.0 - E_{ao}°/E_{ai}°)]$$

where:

$\%R_g°$ is the adjusted $\%R_g$, in percent

$E_{ao}°$ is the adjusted E_{ao}, ng/J (lb/million Btu)

$E_{ai}°$ is the adjusted average SO_2 inlet rate, ng/J (lb/million Btu)

(ii) To compute $E_{ai}°$, an adjusted hourly SO_2 inlet rate ($E_{hi}°$) is used. The $E_{hi}°$ is computed using the following formula:

$$E_{hi}° = [E_{hi} - E_w(1 - X_k)]/X_k$$

where:

$E_{hi}°$ is the adjusted E_{hi}, ng/J (lb/million Btu)

E_{hi} is the hourly SO_2 inlet rate, ng/J (lb/million Btu)

E_w is the SO_2 concentration in fuels other than coal and oil combusted in the affected facility, as determined by fuel sampling and analysis procedures in Method 19, ng/J (lb/million Btu). The value E_w for each fuel lot is used for each hourly average during the time that the lot is being combusted. The owner or operator does not have to measure E_w if the owner or operator elects to assume $E_w = 0$.

X_k is the fraction of the total heat input from fuel combustion derived from coal and oil, as determined by applicable procedures in Method 19.

(g) For oil-fired affected facilities where the owner or operator seeks to demonstrate compliance with the fuel oil sulfur limits under § 60.42c based on shipment fuel sampling, the initial performance test shall consist of sampling and analyzing the oil in the initial tank of oil to be fired in the steam generating unit to demonstrate that the oil contains 0.5 weight percent sulfur or less. Thereafter, the owner or operator of the affected facility shall sample the oil in the fuel tank after each new shipment of oil is received, as described under § 60.46c(d)(2).

(h) For affected facilities subject to § 60.42c(h)(1), (2), or (3) where the owner or operator seeks to demonstrate compliance with the SO_2 standards based on fuel supplier certification, the performance test shall consist of the certification, the certification from the fuel supplier, as described under § 60.48c(f)(1), (2), or (3), as applicable.

(i) The owner or operator of an affected facility seeking to demonstrate compliance with the SO_2 standards under § 60.42c(c)(2) shall demonstrate the maximum design heat input capacity of the steam generating unit by operating the steam generating unit at this capacity for 24 hours. This demonstration shall be made during the initial performance test, and a subsequent demonstration may be requested at any other time. If the demonstrated 24-hour averaged firing rate for the affected facility is less than the maximum design heat input capacity stated by the manufacturer of the

affected facility, the demonstrated 24-hour average firing rate shall be used to determine the annual capacity factor for the affected facility; otherwise, the maximum design heat input capacity provided by the manufacturer shall be used.

(j) The owner or operator of an affected facility shall use all valid SO_2 emissions data in calculating $\%P_s$ and E_{ho} under paragraphs (d), (e), or (f) of this section, as applicable, whether or not the minimum emissions data requirements under § 60.46c(f) are achieved. All valid emissions data, including valid data collected during periods of startup, shutdown, and malfunction, shall be used in calculating $\%P_s$ or E_{ho} pursuant to paragraphs (d), (e), or (f) of this section, as applicable.

§ 60.45c Compliance and performance test methods and procedures for particulate matter.

(a) The owner or operator of an affected facility subject to the PM and/or opacity standards under § 60.43c shall conduct an initial performance test as required under § 60.8, and shall conduct subsequent performance tests as requested by the Administrator, to determine compliance with the standards using the following procedures and reference methods.

(1) Method 1 shall be used to select the sampling site and the number of traverse sampling points. The sampling time for each run shall be at least 120 minutes and the minimum sampling volume shall be 1.7 dry square cubic meters (dscm) [60 dry square cubic feet (dscf)] except that smaller sampling times or volumes may be approved by the Administrator when necessitated by process variables or other factors.

(2) Method 3 shall be used for gas analysis when applying Method 5, Method 5B, of Method 17.

(3) Method 5, Method 5B, or Method 17 shall be used to measure the concentration of PM as follows:

(i) Method 5 may be used only at affected facilities without wet scrubber systems.

(ii) Method 17 may be used at affected facilities with or without wet scrubber systems provided the stack gas temperature does not exceed a temperature of 160 °C (320 °F). The procedures of Sections 2.1 and 2.3 of Method 5B may be used in Method 17 only if Method 17 is used in conjuction with a wet scrubber system. Method 17 shall not be used in conjuction with a wet scrubber system if the effluent is saturated or laden with water droplets.

(iii) Method 5B may be used in conjunction with a wet scrubber system.

(4) For Method 5 or Method 5B, the temperature of the sample gas in the probe and filter holder shall be monitored and maintained at 160 °C (320 °F).

(5) For determination of PM emissions, an oxygen or carbon dioxide measurement shall be obtained simultaneously with each run of Method 5, Method 5B, or Method 17 by traversing the duct at the same sampling location.

(6) For each run using Method 5, Method 5B, or Method 17, the emission rates expressed in ng/J (lb/million Btu) heat input shall be determined using:

(i) The oxygen or carbon dioxide measurements and PM measurements obtained under this section,

(ii) The dry basis F-factor, and

(iii) The dry basis emission rate calculation procedure contained in Method 19 (Appendix A).

(7) Method 9 (6-minute average of 24 observations) shall be used for determining the opacity of stack emissions.

(b) The owner or operator of an affected facility seeking to demonstrate compliance with the PM standards under § 60.43c(b)(2) shall demonstrate the maximum design heat input capacity of the steam generating unit by operating the steam generating unit at this capacity for 24 hours. This demonstration shall be made during the initial performance test, and a subsequent demonstration may be requested at any other time. If the demonstrated 24-hour average firing rate for the affected facility is less than the maximum design heat input capacity stated by the manufacturer of the affected facility, the demonstrated 24-hour average firing rate shall be used to determine the annual capacity factor for the affected facility; otherwise, the maximum design heat input capacity provided by the manufacturer shall be used.

§ 60.46c Emission monitoring for sulfur dioxide

(a) Except as provided in paragraphs (d) and (e) of this section, the owner or operator of an affected facility subject to the SO_2 emission limits under § 60.42c shall install, calibrate, maintain, and operate a CEMS for measuring SO_2 concentrations and either oxygen or carbon dioxide concentrations at the outlet of the SO_2 control device (or the outlet of the steam generating unit if no SO_2 control device is used), and shall record the output of the system. The owner or operator of an affected facility subject to the percent reduction requirements under § 60.42c shall measure SO_2 concentrations and either oxygen or carbon dioxide concentrations at both the inlet and outlet of the SO_2 control device.

(b) The 1-hour average SO_2 emission rates measured by a CEM shall be expressed in ng/J or lb/million Btu heat input and shall be used to calculate the average emission rates under § 60.42c. Each 1-hour average SO_2 emission rate must be based on at least 30 minutes of operation and include at least 2 data points representing two 15-minute periods. Hourly SO_2 emission rates are not calculated if the affected facility is operated less than 30 minutes in a 1-hour period and are not counted toward determination of a steam generating unit operating day.

(c) The procedures under § 60.13 shall be followed for installation, evaluation, and operation of the CEMS.

(1) All CEMS shall be operated in accordance with the applicable procedures under Performance Specifications 1, 2, and 3 (Appendix B).

(2) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with Procedure 1 (Appendix F).

(3) For affected facilities subject to the percent reduction requirements under § 60.42c, the span value of the SO_2 CEMS at the inlet to the SO_2 control device shall be 125 percent of the maximum estimated hourly potential SO_2 emission rate of the fuel combusted, and the span value of the SO_2 CEMS at the outlet from the SO_2 control device shall be 50 percent of the maximum estimated hourly potential SO_2 emission rate of the fuel combusted.

(4) For affected facilities that are not subject to the percent reduction requirements of § 60.42c, the span value of the SO_2 CEMS at the outlet from the SO_2 control device (or outlet of the steam generating unit if no SO_2 control device is used) shall be 125 percent of the maximum estimated hourly potential SO_2 emission rate of the fuel combusted.

(d) As an alternative to operating a CEMS at the inlet to the SO_2 control device (or outlet of the steam generating unit if no SO_2 control device is used) as required under paragraph (a) of this section, an owner or operator may elect to determine the average SO_2 emission rate by sampling the fuel prior to combustion. As an alternative to operating a CEM at the outlet from the SO_2 control device (or outlet of the steam generating unit if no SO_2 control device is used) as required under paragraph (a) of this section, an owner or operator may elect to determine the average SO_2 emission rate by using Method 6B. Fuel sampling shall be conducted pursuant to either paragraph

(d)(1) or (d)(2) of this section. Method 6B shall be conducted pursuant to paragraph (d)(3) of this section.

(1) For affected facilities combusting coal or oil, coal or oil samples shall be collected daily in an as-fired condition at the inlet to the steam generating unit and analyzed for sulfur content and heat content according the Method 19. Method 19 provides procedures for converting these measurements into the format to be used in calculating the average SO_2 input rate.

(2) As an alternative fuel sampling procedure for affected facilities combusting oil, oil samples may be collected from the fuel tank for each steam generating unit immediately after the fule tank is filled and before any oil is combusted. The owner or operator of the affected facility shall analyze the oil sample to determine the sulfur content of the oil. If a partially empty fuel tank is refilled, a new sample and analysis of the fuel in the tank would be required upon filling. Results of the fuel analysis taken after each new shipment of oil is received shall be used as the daily value when calculating the 30-day rolling average until the next shipment is received. If the fuel analysis shows that the sulfur content in the fuel tank is greater than 0.5 weight percent sulfur, the owner or operator shall ensure that the sulfur content of subsequent oil shipments is low enough to cause the 30-day rolling average sulfur content to be 0.5 weight percent sulfur or less.

(3) Method 6B may be used in lieu of CEMS to measure SO_2 at the inlet or outlet of the SO_2 control system. An initial stratification test is required to verify the adequacy of the Method 6B sampling location. The stratification test shall consist of three paired runs of a suitable SO_2 and carbon dioxide measurement train operated at the candidate location and a second similar train operated according to the procedures in § 3.2 and the applicable procedures in section 7 of Performance Specification 2 (Appendix B). Method 6B, Method 6A, or a combination of Methods 6 and 3 or Methods 6C and 3A are suitable measurement techniques. If Method 6B is used for the second train, sampling time and timer operation may be adjusted for the stratification test as long as an adequate sample volume is collected; however, both sampling trains are to be operated similarly. For the location to be adequate for Method 6B 24-hour tests, the mean of the absolute difference between the three paired runs must be less than 10 percent (0.10).

(e) The monitoring requirements of paragraphs (a) and (d) of this section shall not apply to affected facilities subject to § 60.42c(h) (1), (2), or (3) where the owner or operator of the affected facility seeks to demonstrate compliance with the SO_2 standards based on fuel supplier certification, as described under § 60.48c(f) (1), (2), or (3), as applicable.

(f) The owner or operator of an affected facility operating a CEMS pursuant to paragraph (a) of this section, or conducting as-fired fuel sampling pursuant to paragraph (d)(1) of this section, shall obtain emission data for at least 75 percent of the operating hours in at least 22 out of 30 successive steam generating unit operating days. If this minimum data requirement is not met with a single monitoring system, the owner or operator of the affected facility shall supplement the emission data with data collected with other monitoring systems as approved by the Administrator.

§ 60.47c Emission monitoring for particulate matter.

(a) The owner or operator of an affected facility combusting coal, residual oil, or wood that is subject to the opacity standards under § 60.43c shall install, calibrate, maintain, and operate a CEMS for measuring the opacity of the emissions discharged to the atmosphere and record the output of the system.

(b) All CEMS for measuring opacity shall be operated in accordance with the applicable procedures under Performance Specification 1 (appendix B). The span value of the opacity CEMS shall be between 60 and 80 percent.

§ 60.48c Reporting and recordkeeping requirements.

(a) The owner or operator of each affected facility shall submit notification of the date of construction or reconstruction, anticipated startup, and actual startup, as provided by § 60.7 of this part. This notification shall include:

(1) The design heat input capacity of the affected facility and identification of fuels to be combusted in the affected facility.

(2) If applicable, a copy of any Federally enforceable requirement that limits the annual capacity factor for any fuel or mixture of fuels under § 60.42c, or § 60.43c.

(3) The annual capacity factor at which the owner or operator anticipates operating the affected facility based on all fuels fired and based on each individual fuel fired.

(4) Notification if an emerging technology will be used for controlling SO_2 emissions. The Administrator will examine the description of the control device and will determine whether the technology qualifies as an emerging technology. In making this determination, the Administrator may require the owner or operator of the affected facility to submit additional information concerning the control device. The affected facility is subject to the provisions of § 60.42c(a) or (b)(1), unless and until this determination is made by the Administrator.

(b) The owner or operator of each affected facility subject to the SO_2 emission limits of § 60.42c, or the PM or opacity limits of § 60.43c, shall submit to the Administrator the performance test data from the initial and any subsequent performance tests and, if applicable, the performance evaluation of the CEMS using the applicable performance specifications in appendix B.

(c) The owner or operator of each coal-fired, residual oil-fired, or wood-fired affected facility subject to the opacity limits under § 60.43c(c) shall submit excess emission reports for any calendar quarter for which there are excess emissions from the affected facility. If there are no excess emissions during the calendar quarter, the owner or operator shall submit a report semiannually stating that no excess emissioins occurred during the semiannual reporting period. The initial quarterly report shall be postmarked by the 30th day of the third month following the completion of the initial performance test, unless no excess emissions occur during that quarter. The initial semiannual report shall be postmarked by the 30th day of the sixth month following the completion of the initial performance test, or following the date of the previous quarterly report, as applicable. Each subsequent quarterly or semiannual report shall be postmarked by the 30th day following the end of the reporting period.

(d) The owner or operator of each affected facility subject to the SO_2 emission limits, fuel oil sulfur limits, or percent reduction requirements under § 60.42c shall submit quarterly reports to the Administrator. The initial quarterly report shall be postmarked by the 30th day of the third month following the completion of the initial performance test. Each subsequenty quarterly report shall be postmarked by the 30th day following the end of the reporting period.

(e) The owner or operator of each affected facility subject to the SO_2 emission limits, fuel oil sulfur limits, or percent reduction requirements under § 60.43c shall keep records and submit quarterly reports as required under paragraph (d) of this section, including the following information, as applicable.

(1) Calendar dates covered in the reporting period.

(2) Each 30-day average SO_2 emission rate (ng/J or lb/million Btu), or 30-day average sulfur content (weight percent), calculated during the reporting period, ending with the last 30-day period in the quarter; reasons for any noncompliance with the emission standards; and a description of corrective actions taken.

(3) Each 30-day average percent of potential SO_2 emission rate calculated during the reporting period, ending with the last 30-day period in the quarter; reasons for any noncompliance with the emission standards; and a description of corrective actions taken.

(4) Identification of any steam generating unit operating days for which SO_2 or diluent (oxygen or carbon dioxide) data have not been obtained by an approved method for at least 75 percent of the operating hours; justification for not obtaining sufficient data; and a description of corrective actions taken.

(5) Identification of any times when emissions data have been excluded from the calculation of average emission rates; justification for excluding data; and a description of corrective actions taken if data have been excluded for periods other than those during which coal or oil were not combusted in the steam generating unit.

(6) Identification of the F factor used in calculations, method of determination, and type of fuel combusted.

(7) Identification of whether averages have been obtained based on CEMS rather than manual sampling methods.

(8) If a CEMS is used, identification of any times when the pollutant concentration exceeded the full span of the CEMS.

(9) If a CEMS is used, description of any modifications to the CEMS that could affect the ability of the CEMS to comply with Performance Specifications 2 or 3 (appendix B).

(10) If a CEMS is used, results of daily CEMS drift tests and quarterly accuracy assessments as required under appendix F, Procedure 1.

(11) If fuel supplier certification is used to demonstrate compliance, records of fuel supplier certification as described under paragraph (f)(1), (2), or (3) of this section, as applicable. In addition to records of fuel supplier certifications, the quarterly report shall include a certified statement signed by the owner or operator of the affected facility that the records of fuel supplier certifications submitted represent all of the fuel combusted during the quarter.

(f) Fuel supplier certification shall include the following information:

(1) For distillate oil:

(i) The name of the oil supplier; and

(ii) A statement from the oil supplier that the oil complies with the specifications under the definition of distillate oil in § 60.41c.

(2) For residual oil:

(i) The name of the oil supplier;

(ii) The location of the oil when the sample was drawn for analysis to determine the sulfur content of the oil, specifically including whether the oil was sampled as delivered to the affected facility, or whether the sample was drawn from oil in storage at the oil supplier's or oil refiner's facility, or other location;

(iii) The sulfur content of the oil from which the shipment came (or of the shipment itself); and

(iv) The method used to determine the sulfur content of the oil.

(3) For coal:

(i) The name of the coal supplier;

(ii) The location of the coal when the sample was collected for analysis to determine the properties of the coal, specifically including whether the coal was sampled as delivered to the affected facility or whether the sample was collected from coal in storage at the mine, at a coal preparation plant, at a coal supplier's facility, or at another location. The certification shall include the name of the coal mine (and coal seam), coal storage facility, or coal preparation plant (where the sample was collected);

(iii) The results of the analysis of the coal from which the shipment came (or of the shipment itself) including the sulfur content, moisture content, ash content, and heat content; and

(iv) The methods used to determine the properties of the coal.

(g) The owner or operator of each affected facility shall record and maintain records of the amounts of each fuel combusted during each day.

(h) The owner or operator of each affected facility subject to a Federally enforceable requirement limiting the annual capacity factor for any fuel or mixture of fuels under § 60.42c or § 60.43c shall calculate the annual capacity factor individually for each fuel combusted. The annual capacity factor is determined on a 12-month rolling average basis with a new annual capacity factor calculated at the end of the calendar month.

(i) All records required under this section shall be maintained by the owner or operator of the affected facility for a period of two years following the date of such record.

(Approved by the Office of Management and Budget under control number 2060-0202)

[FR Doc. 90-21383 Filed 9-11-90; 8:45 am]

BILLING CODE 6560-50-M

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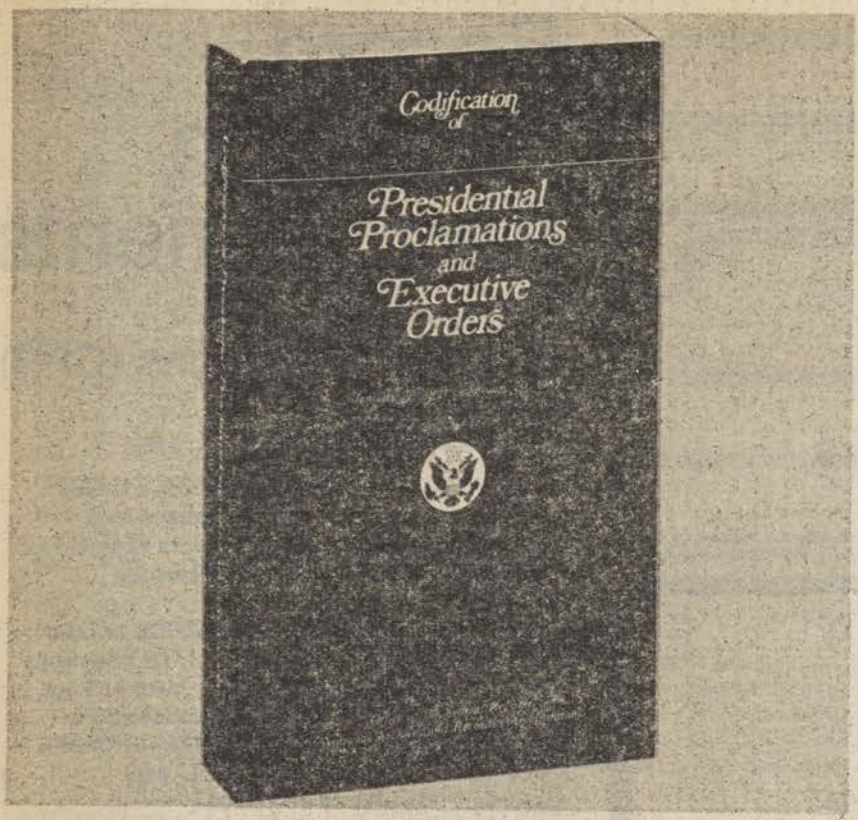

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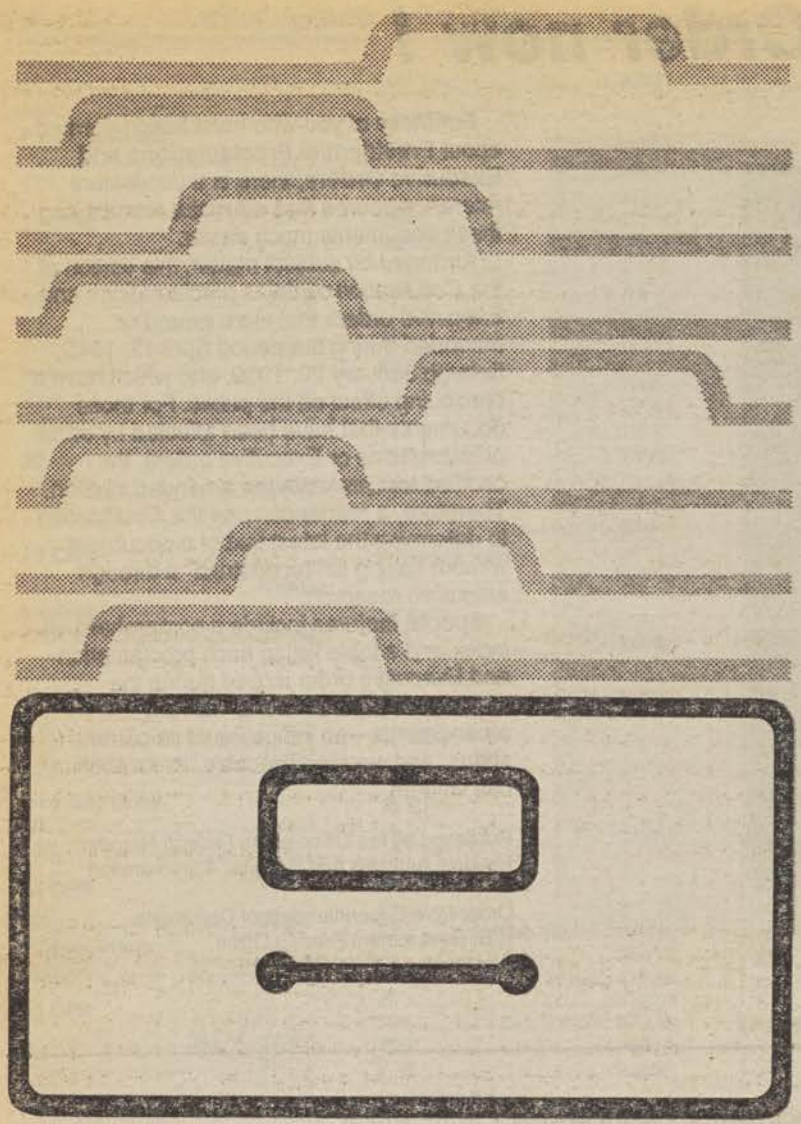

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in the Code of Federal Regulations (CFR)

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